# Supreme Court of the United States

OCTOBER TERM, 1970

**No. 5850**

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GEORGIA TOWNSEND, ETC.,

*Appellant,*

—v.—

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL.

and

**No. 6000**

LOVERTA ALEXANDER, ET AL.,

*Appellants,*

—v.—

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL.

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APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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## No. 6000

## ALEXANDER

*v.*

## SWANK

and

## No. 5850

## TOWNSEND

*v.*

## SWANK

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| DATE | LIST OF ENTRIES |
|---|---|
| 1- 8-68 | 1. Complaint and 7 copies with Appendix (one attached) filed |
| 1- 8-68 | 2. Order granting plaintiff leave to proceed in forma pauperis and to waive filing fee entered. U.S. Marshall is ordered to serve summons without payment of costs. Napoli, J. |
| 12- 5-68 | 3. Motion of defendant Harold O. Swank to strike and dismiss complaint filed. |
| 12-10-68 | 4. Memorandum in support of motion of Harold O. Swank, Director of the Department of Public Aid of the State of Illinois to strike and dismiss plaintiffs' complaint for declaratory judgment and Injunction filed. |
| 12-20-68 | 5. Plaintiffs' Petition to Amend Complaint filed. |
| 12-20-68 | 6. Plaintiffs' Memorandum in opposition to defendant Harold O. Swank's motion to strike and dismiss Plaintiffs' Complaint filed. |

| DATE | LIST OF ENTRIES |
|---|---|
| 1- 6-69 | 7. Appearance of William H. Robinson, Director Cook County Department of Public Aid, Mae Withers, Supervisor, Woodlawn District Office, Cook County Department of Public Aid as defendants and that of Edward V. Hanrahan, State's Attorney of Cook County as attorney for said defendants filed. |
| 1- 6-69 | 8. Motion to dismiss of defendants William H. Robinson and Mae Withers filed. |
| 1-21-69 | 9. Plaintiffs' Memorandum in support of Plaintiffs' motion to convene a Three Judge Court, filed. |
| 1-21-69 | 10. Plaintiffs' Memorandum in opposition to defendants Robinson and Withers motion to dismiss filed. |
| 1-21-69 | 11. Plaintiffs' motion to convene Three Judge Court and Notice of Motion filed. |
| 1-23-69 | 12. Appearance of Georgia Townsend, ind. and on behalf of her dependent daughter Omega Minor and Omega Minor, individually as plaintiffs' and that of Thad B. Eubanks, Michael F. Lefkow and Arnold D. Breyer as attorneys for said plaintiffs, filed. |
| 1-23-69 | 13. Pauper Affidavit of Georgia Townsend filed. |
| 1-23-69 | 14. Pauper affidavit of Omega Minor filed. |
| 1-23-69 | 15. Motion to intervene as additional plaintiffs and class representatives, filed. |
| 1-23-69 | 16. Order granting motion for leave to file Pauper's Affidavits, Appearance, Affidavit and Compliance and for leave to join as additional parties plaintiff and class representative, entered. Marovitz, J. Mailed notices 1-24-69. |
| 1-23-69 | 17. Order granting plaintiffs' motion to substitute Defendant David L. Daniel for defendant William H. Robinson, pursuant to rule 25(d), entered. Marovitz, J. |

| DATE | LIST OF ENTRIES |
|---|---|
| 1-23-69 | 18. Plaintiffs' Petition to Amend Complaint filed. |
| 1-23-69 | 19. Order granting plaintiffs' motion to correct and amend typographical error in complaint on the face so that the fifth line of paragraph one (page one) and the second line of paragraph 2(b) (page 6) in plaintiffs' complaint read "Article IV, Clause 2 of the United States Constitution", entered. Marovitz, J. |
| 2-11-69 | 20. Motion of Harold O. Swank, Director, etc., to strike and dismiss the intervenors' complaint filed. |
| 2-11-69 | 21. Objection of Harold O. Swank, Director, etc., to plaintiffs' motion to convene a three Judge Court, filed. |
| 2-14-69 | 22. Motion to dismiss action of intervening plaintiffs and objections to motion to convene a Three Judge District Court, filed. |
| 3-12-69 | 23. Intervening Complaint filed. |
| 3-12-69 | 24. Leave granted to file intervening complaint instanter. The motion of defendant, Cook County to dismiss the original complaint shall stand to the intervening complaint. The motion of defendant the State of Illinois to strike and dismiss the intervening petition shall stand to the intervening Complaint. Marovitz, J. |
| 3-13-69 | 25. Georgia Townsend and Omega Minor, plaintiffs' Memorandum in opposition to defendants Swank, Daniel and Withers motions to strike and dismiss their complaint filed. |
| 3-28-69 | 26. Memorandum Opinion filed. |
| 3-28-69 | 27. The Court files its Memorandum Opinion and counsel shall prepare a draft order in accordance therewith and submit same for entry on April 1, 1969 at 10:00 a.m. Marovitz, J. Mailed notices 4-1-69 |

| DATE | | LIST OF ENTRIES |
|---|---|---|
| 3-17-69 | 28. | Memorandum in support of Motion of Harold O. Swank, Director of the Department of Public Aid of the State of Illinois to strike and dismiss the Intervenors complaint, filed. |
| 4- 3-69 | 29. | Order the intervening parties Georgia Townsend and Omega Minor are allowed to intervene as plaintiffs. A Three Judge Court shall be convened. Defendants' motions to strike and dismiss the complaints are denied. Defendants are directed to file their answers within 40 days from date; Plaintiffs to file any responsive pleadings within 15 days thereafter and defendants to file any responsive pleadings within 15 days after the filing of plaintiffs' pleadings—Draft, Marovitz, J. Mailed notices 4-3-69 |
| 4- 7-69 | 30. | Designation of Three Judge Court comprising of the Honorable Luther M. Swygert, Honorable Joseph Sam Perry and the Honorable Abraham L. Marovitz, Judges, filed. |
| 5-16-69 | 31. | Answer of Harold O. Swank to the complaint as amended of Loverta Alexander and Jerome Alexander, filed. |
| 5-16-69 | 32. | Answer of Harold O. Swank to the complaint of Georgia Townsend and Omega Minor, filed. |
| 6- 2-69 | 33. | Plaintiffs' Motion for Summary Judgment and Default Judgment, filed. |
| 6-17-69 | 34. | Plaintiffs' Motion for Summary Judgment and Default Judgment, filed. |
| 7-25-69 | 35. | Memorandum of Intervening Plaintiffs' in support of motion for summary Judgment, filed. |
| 7-30-69 | 36. | Answer of David L. Daniel to the complaint of Georgia Townsend and Omega Minor, intervenors, filed. |
| 7-30-69 | 37. | Answer of defendant, David L. Daniel to amended complaint filed. |

| DATE | | LIST OF ENTRIES |
|---|---|---|
| 8-11-69 | 38. | Memorandum in support of plaintiff's motion for summary judgment, filed. |
| 9-18-69 | 39. | Deposition of Jerome Alexander, filed. |
| 9-18-69 | 40. | Deposition of Loverta Alexander, filed. (One Envelope) |
| 10- 8-69 | 41. | Deposition of Georgia Townsend, filed. |
| 10- 8-69 | 42. | Deposition of Omega Minor, filed. |
| 11-17-69 | 43. | Brief of the defendants David L. Daniel and Mae Withers in opposition to the Plaintiffs' motion for summary Judgment, filed. |
| 11-18-69 | 44. | Answer of Defendant, Harold O. Swank, Director Department of Public Aid of The State of Illinois, to plaintiffs' Loverta Alexander's and Jerome Alexander's motion for summary judgment and default judgment, with exhibits A and B attached, filed. |
| 11-18-69 | 45. | Answer of defendant, Harold O. Swank, Director Department of Public Aid of The State of Illinois, to Plaintiffs, Omega Minor's and Georgia Townsend's motion for Summary Judgment and Default with exhibits C and D attached, filed. |
| 11-18-69 | 46. | Motion of Defendant, Harold O. Swank for Summary Judgment against the Plaintiffs' with exhibits A, B, C, D attached, filed. |
| 11-18-69 | 47. | Motion of defendant, Harold O. Swank to strike the Memorandum in support of intervening plaintiffs' motion for Summary Judgment, filed. |
| 11-18-69 | 48. | Memorandum in support of:<br>Swank's answer to Plaintiffs' motion for Summary Judgment.<br>Swank's motion for Summary Judgment; and,<br>Swank's Motion to strike Memorandum of intervening plaintiffs' in support of their motion for Summary Judgment, filed. |

| DATE | LIST OF ENTRIES |
|---|---|
| 11-18-69 | 49. Enter order granting motion of defendant Swank for leave to file instanter 1) Ans. to plaintiffs' motions for summary judgment,<br>2) Defendants' motion for Summary Judgment,<br>3) Motion strike plaintiffs' memo in support of motion for summary judgment, and,<br>4) Memo(s) in support of foregoing.<br>Motion of defendant Harold S. Swank to strike the Memorandum in support of intervening plaintiffs' motion for Summary Judgment is denied. Marovitz, J. |
| 11-21-69 | 50. Plaintiffs' motion to strike defendant Swank's distorted, unsworn and uncertified exhibit and to substitute an accurate and certified exhibit attached hereto, filed. |
| 11-21-69 | 51. Cause is called for hearing, by motion of Mr. M. B. Goldberg, a member of the Bar of this Court, leave is granted Mr. James Spitzer, a member of the New York Bar to participate in this cause on behalf of the plaintiffs. Arguments heard and concluded and cause is taken under advisement. Swygert, CCA, J. Perry, D.C. J., Marovitz, D.C. J. Mailed notices 11-24-69. |
| 11-21-69 | 52. Appearance of James Spitzer, Jr., as attorney for plaintiffs Loverta and Jerome Alexander, filed. |
| 5- 5-70 | 53. Copy of Memorandum from Southern District of New York, Thelma Napper vs. George K. WYMAN, filed. |
| 2-16-70 | 54. Supplemental Memorandum in support of Plaintiffs' motions for Summary Judgment, filed. |

| DATE | LIST OF ENTRIES |
|---|---|
| 2-16-70 | 55. Leave granted plaintiffs to file instanter supplemental Memorandum in support of plaintiffs' motions for Summary Judgment.<br>Defendants are granted 5 days from date to file responsive Memorandum. Marovitz, J. |
| 4-30-70 | 56. Memorandum Opinion Judge Marovitz, filed. |
| 4-30-70 | 57. It appearing to the Court that William G. Clark, is no longer the Attorney General of the State of Illinois. It is therefore ordered that the cause be and the same is hereby dismissed as to the defendant William G. Clark, Attorney General of the State of Illinois.<br>Pursuant to the Court's Memorandum Opinion It is Ordered that the relief requested by plaintiffs must be denied. Plaintiffs' motion for Summary Judgment must be denied, defendants' motion for summary judgment must be granted and the cause must be dismissed.<br>SWYGERT, CJ, PERRY, DJ., MAROVITZ, DJ. |
| 5-11-70 | 58. Plaintiffs, Loverta Alexander and Jerome Alexander, Motion for Reconsideration; and Notices. (original and 3 copies) filed. |
| 5-11-70 | 59. Intervening Plaintiffs Georgia Townsend and Omega Minor, Motion for Reconsideration filed. |
| 5-15-70 | 60. Order requiring defendants to file a response to plaintiffs' motions for reconsideration within 10 days entered.—Marovitz, J. |
| 5-25-70 | 61. Response of Harold O. Swank to Plaintiffs' motions for reconsideration with documents attached, filed. |
| 5-25-70 | 62. Memorandum of the County Defendants in opposition to the plaintiffs' motion for reconsideration, filed. |

| DATE | LIST OF ENTRIES |
|---|---|
| 6-12-70 | 63. It is Ordered that plaintiffs' motions for vacating judgment and for reconsideration are hereby denied as to all issues.—SWYGERT, CAJ, PERRY, DCJ, MAROVITZ, DCJ. Mailed notices 6-12-70 |
| 7-14-70 | 64. Affidavit of Omega Minor, in support of motion to proceed on appeal in forma pauperis, filed. |
| 7-14-70 | 65. Affidavit of Georgia Townsend, in support of motion to proceed on appeal in forma pauperis, filed. |
| 7-14-70 | 66. Enter order: Motion for leave to proceed in forma pauperis, granted Perry J. Mailed notices 7-15-70 |
| 7-14-70 | 67. Plaintiffs' motion for leave to proceed on appeal in forma pauperis, with notice of motion attached, filed. |
| 7-14-70 | 68. Affidavit of Loverta Alexander, in support of motion to proceed on Appeal in forma pauperis, filed. |
| 7-14-70 | 69. Affidavit of Jerome Alexander, in support of motion to proceed on Appeal in forma Pauperis, filed. |
| 7-14-70 | 70. Enter order: Motion for leave to proceed on Appeal in forma pauperis, granted.—Perry, J. Mailed notices 7-15-70 |
| 7-14-70 | 71. Notice of Appeal to the Supreme Court of the United States on Behalf of Plaintiffs, filed. |
| 7-14-70 | 72. Notice of Appeal to the Supreme Court of the United States on behalf of Intervening Plaintiffs, filed. |
| 7-27-70 | 73. Plaintiffs and Intervening plaintiffs designation of contents of Record to be certified and transmitted to the Supreme Court, with Notice of Motion attached, thereto, filed. |

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

---

JUDGE MAROVITZ

No. 68C 2134

LOVERTA ALEXANDER, individually and on behalf of her minor son JEROME ALEXANDER; all individually and on behalf of all other persons similarly situated

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid; WILLIAM H. ROBINSON, Director, Cook County Department of Public Aid; MAE WITHERS, Supervisor, Woodlawn District Office, Cook County Department of Public Aid; WILLIAM G. CLARK, Attorney General of the State of Illinois

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION—Filed November 8, 1968

1

Jurisdiction is based on Title 28 United States Code 1343 (3) (4), 2201, 2281 and 2284. Plaintiffs' cause of action arises under the Federal Civil Rights Act, Title 42, United States Code, Section 1983; Section 406 (a) (2) of the Social Security Act [Title 42 United States Code, Section 606 (a) (2)], Article IV, Clause 2 of the United States Constitution and under the Fourteenth Amendment to the United States Constitution.

2

(a) Plaintiff LOVERTA ALEXANDER is the mother of Plaintiff JEROME ALEXANDER and until November 1, 1968, a recipient of Aid to Families with Dependent Children (hereafter A.F.D.C.) a federally assisted welfare program administered by the Illinois Department of Public Aid.

(b) Plaintiff JEROME ALEXANDER is the only child at home of Plaintiff LOVERTA ALEXANDER. He is 18 years old and a full time student at Wilson Junior College, an accredited Junior College in Chicago, Illinois. JEROME ALEXANDER resides with his mother at their residence in the City of Chicago. He together with his mother received A.F.D.C. benefits until November 1, 1968.

(c) Plaintiffs bring this class action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23 (a) (b) (2) and (b) (3) of the Federal Rules of Civil Procedure. The members of the class similarly situated are children between the ages of 18 and 21 and their parents or legal guardians who are denied A.F.D.C. benefits by the defendants solely because said children are or could be, full time college or university students as opposed to being full time high school, trade school or vocational school students. All members of the class are residents of the state of Illinois. The members of this class are so numerous as to make joinder impracticable; there are questions of law and fact common to the class; the claims representative of the parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

3

The defendants are:

(a) HAROLD O. SWANK, Director of the Illinois Department of Public Aid

(b) WILLIAM H. ROBINSON, Director of the Cook County Department of Public Aid

(c) MAE WITHERS, Supervisor, Woodlawn District Office of the Cook County Department of Public Aid

The above named defendants are responsible under Illinois Statutes for the administration of A.F.D.C. benefits. Defendant HAROLD O. SWANK, is directly re-

sponsible for the promulgation and issuance of the regulation complained of herein.

(d) WILLIAM G. CLARK is the Attorney General of Illinois, the chief legal officer of the state.

4

(a) Illinois Public Aid Code, Article IV, sections 4-1.1 (Ch 23 sec 4-1.1 Ill. Rev. Stat as amended 1967) provides:

> Child Age Eligibility. The child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. "Regular attendance" as used in this Section, means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements instruction or which otherwise enhances his development toward a self-supporting status

(b) Illinois Department of Public Aid Regulation 150 provides in pertinent part:

> Age Requirements—Dependant children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational training school. (This does not include 18 through 20 years old children in college.)

5

On August 15, 1968 Plaintiff JEROME ALEXANDER graduated from High School. On September 9, 1968 plaintiff JEROME ALEXANDER enrolled as a full time student at Wilson Junior College located in the City of Chicago. JEROME ALEXANDER continued to reside with his mother, the plaintiff LOVERTA ALEXANDER. Plaintiff, JEROME ALEXANDER, reached 18 years of age on August 11, 1968.

6

On October 4, 1968 defendant MAE WITHERS, Superintendent of the Woodlawn District Office of the Cook County Department of Public Aid, acting in accordance with Ch. 23, sec. 4-1.1, Ill. Rev. Stat. and Illinois Department of Public Aid Regulation 150 withdrew A.F.D.C. assistance from plaintiffs. At all times herein defendant MAE WITHERS was acting under the direction and control of the other named defendants.

7

The Illinois Statute and the Department of Public Aid Regulation are unconstitutional on their face under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution insofar as they deny A.F.D.C. benefits to plaintiffs and other persons similarly situated.

(a) A classification which distinguishes between A.F.D.C. recipients who are full time students of high school, trade school or vocational school and those who are full time students of a college or university in an arbitrary and invidious discrimination, and bears no rational or reasonable relation to the salutory purpose of federal and state A.F.D.C. statutes and regulations.

(b) Plaintiff JEROME ALEXANDER would be entitled to A.F.D.C. benefits until reaching 21 years of age if he were enrolled as a full-time student in high school, trade or vocational school. A.F.D.C. benefits have been extended past the normal termination age of 18 by both federal and state statutes and regulations in order to encourage the children of indigent families to gain the necessary education needed to break the poverty cycle. To exclude college students from those entitled to extended benefits clearly thwarts the purpose of those extended benefits. Such an exclusion is irrational and irreconcilable with the basic purpose of A.F.D.C. assistance.

(c) Defendants herein have placed plaintiff JEROME ALEXANDER in the class of those available for full time employment although he is a full time student and unavailable for such employment. Such classification is

arbitrary and invidious in that it deprives the plaintiff and others similarly situated from a particular type of educaton with no logical or rational purpose for such deprivation.

8

(a) The Illinois statute and Department Regulation in question herein are in direct violation of Sec. 406 (a) (2) of the Social Security Act [Title 42 United States Code, Section 606 (a) (2)] which provides for the extension of A.F.D.C. benefits to age 21 for students "regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

(b) The Department of Health, Education and Welfare in its Handbook of Public Assistance Administration has interpreted Sec. 406 (a) (2) to mean that the student should have his choice between advanced study at the college level or specific vocational or technical training in the same manner as those students not receiving public assistance. The HEW Regulation clearly provides federal financial participation for "children otherwise eligible for A.F.D.C. who:

"Have attained age 18 and are under 21 provided they are regularly attending:

(1) a school, college or university or
(2) a course of vocational or technical training designed to fit them for gainful employment."

(See appendix one)

9

The appropriate remedy is not to invalidate the entire Illinois Statute and Regulation, but just those parts which deny extended A.F.D.C. benefits to full time students enrolled in a college or university. The court should require the Department to extend these benefits equally to all full time students between 18 and 21 years of age.

10

Plaintiffs have no plain adequate or complete remedy at law. Unless relief requested herein is granted, plain-

tiffs will suffer irreparable injury and harm by virtue of defendants' refusal to act as set forth above.

WHEREFORE, plaintiffs pray:

(1) That pursuant to Title 28 United States Code, Section 2281 and 2284 a three judge court be convened to hear and determine this proceeding.

(2) The court declare Ch. 23 Sec. 4-1.1 Ill. Rev. Stat. and Illinois Department of Public Aid Regulation 150 to be:

(a) in violation of the Fourteenth Amendment to the United States Constitution;

(b) in violation of existing federal laws and therefore invalid under the Supremacy Clause Article IV, Clause 2, United States Constitution;

(3) The court grant an order temporarily restraining defendants from enforcing Ch. 23, Sec. 4-1.1, Ill. Rev. Stat. and Illinois Department of Public Aid Reg. 150 against plaintiffs and other members of the class.

(4) The Court temporarily enjoin, and after a hearing permanently enjoin defendants from enforcing Ch. 23, sec. 4-1.1 and Ill. Department of Public Aid Reg. 150.

5. The court grant such further relief as shall be necessary and proper.

Respectfully submitted

/s/ Melvin B. Goldberg
MELVIN B. GOLDBERG
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Of Counsel:

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*[Duly sworn to by Loverta Alexander and Jerome Alexander jurat omitted in printing (all in italics)]*

APPENDIX ONE

C-3200

Handbook of Public Assistance Administration
"Green Sheets"
(Supplemental Pages for the Handbook)

Part IV Eligibility, Assistance, and Services

3200-3299 Age 10/11/65

G-3200. *Age*

G-3210. *Provisions of the Act*

*Aid to Families With Dependent Children*—Section 406 of the Social Security Act states as follows: "When used in this title—(a) The term 'dependent child' means a needy child . . . (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

G-3220. *Interpretation*

The objective of the optional extension of the AFDC age limit to age twenty-one is to make it possible for States to claim Federal financial participation in the cost of assistance given in behalf of individuals under that age, while enabling them to take advantage of educational opportunities to improve their preparation for self-support.

At age 18, some young people may not yet be in high school and some age 18 to 21 are attending high school or institutions of higher learning, but may not have graduated. Assistance may be the factor in enabling them to continue in school. Others may be helped to return to school

or take advantage of vocational or technical training, if financial assistance in their behalf is available, and thus become better prepared to enter the labor market. These provisions include not only the youth living with relatives, but also those receiving assistance under AFDC foster care.

A student must be in regular attendance in a school, including elementary grades, high school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. Those who are attending school, or taking a course of vocational or technical training, on a part-time basis are considered to be in regular attendance.

A high school diploma is frequently a requirement for many jobs; and frequently, some college training, or even a degree, is necessary. Therefore, it is important to allow a young person the opportunity to at least complete high school, or to undertake advanced study, if he wishes to do so, rather than take specific vocational or technical training.

As is customary with families not receiving public assistance, the decision as to the course of study or training to be taken should be left to the youth and his parents. This does not preclude the recommendations of educational authorities as to the program best suited to the youth's capacities. Within the age limit set by the State, there should be a choice of attending a school, college, or university or taking a course of vocational or technical training for gainful employment.

For purposes of the Act, a course of vocational or technical training is an organized curriculum in a school or training unit or an organized training program under recognized sponsorship with a specified employment objective.

In addition to training courses offered by schools, institutes, or other training programs (e.g. apprenticeships or training arrangements, sponsored by business or industrial firms), youths served by the AFDC program might be eligible for admission to training courses established within programs under the Economic Opportunity Act (title I, Part A, and title V), the Manpower Development and Training Act, the AFDC Unemployed Parent Program (see IV-3424) and the Community Work and Training Program (see IV-3460) under title IV of the Social Security Act, and the Vocational Education Acts. Thus, vocational education courses provided pursuant to co-operative arrangements between the State public assistance agency and the State agency responsible for vocational education, under the authority of title IV of the Social Security Act, may offer training opportunities for youths receiving AFDC.

To achieve the objective of this legislation for increasing a young person's employability, he must have sufficient time, both in or outside the classroom or training center, to do the work required to complete the course. Therefore, a youth attending school or engaged in a training program should not be required to accept employment, in addition to his educational program, to remain eligible for AFDC.

Consideration of payments made under title I or II of the Economic Opportunity Act or programs assisted under such title must conform to legal prohibitions of the Act limiting the amount of such income which can be used in determination of need under public assistance programs. (See IV-3180.)

G-3240. *Federal Financial Participation*

Federal financial participation may be claimed for money or foster care payments made, or for

vendor payments made for medical services received, on or after July 30, 1965, with respect to children otherwise eligible for AFDC who:

Have attained age 18 and are under age 21 provided they are regularly attending:

(1) A school, college, or university or

(2) A course of vocational or technical training designed to fit them for gainful employment.

If payments are made under the conditions above, Federal financial participation may be claimed in payments made for months in which the child is not in school because of official school vacation, illness, convalescence, or family emergency, and for the month in which the child becomes 21 or in which he completes or discontinues his school or training attendance.

H. T. No. 69

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL.

*vs.*

HAROLD O. SWANK, ET AL.

PETITION TO AMEND COMPLAINT—
Filed December 20, 1968

Plaintiffs by their attorney Melvin B. Goldberg petition the Honorable Court for leave to correct and amend the fifth line of paragraph one (page one) and the second line of paragraph 2 (b) (page 6) in plaintiffs Complaint in the instant cause to read "Article VI, Clause 2 of the United States Constitution" instead of the present phrase "Article IV, Clause 2 of the United States Constitution" and in support thereof states as follows:

1) Plaintiffs have, from the outset, intended to rely on Article VI, Clause 2 of the United States Constitution, also referred to as "the Supremacy Clause" as one basis for the Court's jurisdiction.

2) A typographical error was made in preparation of the Complaint which in advertently transposed the roman numerals used in the phrase "Article VI".

WHEREFORE, plaintiffs pray for leave to correct and amend the Complaint as stated above so as to convey plaintiffs true intent.

Respectfully submitted

/s/ Melvin B. Goldberg
Attorney for Plaintiffs

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[Certificate of Service (Omitted in Printing)]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

GEORGIA TOWNSEND and OMEGA MINOR, both individually, and both on behalf of all OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

—*vs*—

HAROLD O. SWANK, Director, Illinois Department of Public Aid; and DAVID L. DANIEL, Director, Cook County Department of Public Aid, DEFENDANTS

INTERVENING COMPLAINT—Filed March 12, 1969

Now comes GEORGIA TOWNSEND and OMEGA MINOR, both individually and both as members of the class described in the original complaint, by Thad B. Eubanks, Michael F. Lefkow and Arnold D. Breyer, their attorneys, complaining of all defendants and praying damages for depriving plaintiffs, and the class they represent, under color of law, of the rights, privileges and immunities secured to them, and the class they represent, by the Constitution and laws of the United States, and say:

1. This is an action for declaratory judgment pursuant to Title 28, U.S.C. Section 2201, that Chapter 23, Section 4-1.1, *Child Age Eligibility*, Illinois Rev. Stat., 1967, and Section 150 of the Illinois Department of Public Aid Catagorical Assistance Manual, a state wide regulation; are invalid and unconstitutional on their face and as applied to plaintiffs because they are in violation of and in conflict with Title 42, U.S.C., Sections 602(a)(9) and 606(a), supremacy of said federal statutes, being guaranteed by Article VI, Clause 2, of the United States Constitution, and because they are in violation of the Due Process and Equal Protection Clauses

of the Fourteenth Amendment to the United States Constitution, and also an action for supplementary injunctive relief, pursuant to Title 42, U.S.C., Section 1983, to enjoin the operation and enforcement of the above cited Illinois statute and regulation insofar as they deny persons, such as plaintiffs and the class they represent, a public assistance payment under the Illinois Aid to Families with Dependent Children (hereinafter referred to as AFDC) program to or for the benefit or support of any otherwise eligible child who is between the ages of 18 and 21 and a full time student at a college or university. The grounds for the relief sought in this action are:

a. Article VI, Clause 2, *Supremacy*, of the United States Constitution guarantees the supremacy of federal law when state and federal law are in conflict. Title 42, United States Code, Section 602(a)(9) requires that a State plan, as a condition of federal financial assistance, must furnish aid to all eligible persons with reasonable promptness. Title 42, United States Code, Section 606(a)(1) and (2) defines eligible persons to include college and university students.

> Title 42. United States Code, Section 606(a): "(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care . . ., and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) *a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;*" (Emphasis added).

However, the Illinois statute and regulation define eligible persons as not including college or university students.

Chap. 23. Ill. Rev. Stat., 1967. S.4-1.1. Child age eligibility:

"The child or children must be under 18, or age 18 or over but under age 21 if in *regular attendance in high school or in a vocational or technical training school.*" (Emphasis added). Ill. Dept. of Public Aid. Catagorical Assistance Manual. S. 150. Age requirements: ADC:

"Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. *(This does not include 18 through 20 year old children in college.)*" (Emphasis added.)

Pursuant to the above cited Illinois Statute and regulation the defendants herein, by excluding plaintiffs, who are otherwise eligible, from an AFDC grant, solely because plaintiff OMEGA MINOR is a full time college student, have deprived and continue to deprive plaintiffs of the benefits and privileges extended to them by federal law and such federal law is declared supreme by Article VI, Clause 2, of the United States Constitution.

b. The above cited Illinois statute and regulation arbitrarily and unreasonable and contrary to the purposes of the AFDC program, discriminate in violation of the Equal Protection and Due Process Clauses of this Fourteenth Amendment to the United States Constitution between children who are students in a college or university and children who are students in a high school, vocational or technical training school by excluding from AFDC benefits those children who are students in a college or university.

2. This is a federal cause of action to secure rights, privileges and immunities established by federal law and the United States Constitution as provided in:

Title 42. United States Code. S. 1983. Civil action for deprivation of rights:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Jurisdiction is conferred on this Court by 28 U.S.C. SSC 1343(3) and (4), providing for original jurisdiction of this Court in suits authorized by 42 U.S.C. SS. 1983, and SS. 2201 and 2202 authorizing declaratory judgments.

3. Application is hereby made for the convening of a three-judge Federal District Court to hear and determine this matter pursuant to 28 U.S.C. 2281 and 2284.

4. Plaintiffs GEORGIA TOWNSEND and OMEGA MINOR are citizens of the United States and of Illinois and reside in Chicago, Illinois.

a. GEORGIA TOWNSEND is the mother and sole support of OMEGA MINOR, an illegitimate child born December 19, 1948.

b. GEORGIA TOWNSEND is a disabled individual and has no income, resources, support or maintenance other than public assistance payments from the Illinois and Cook County Departments of Public Aid as administered by defendants.

c. GEORGIA TOWNSEND received an AFDC grant on behalf of herself and on behalf of her dependent daughter OMEGA MINOR from December, 1953 to April, 1960. From April, 1963 to January, 1967 GEORGIA TOWNSEND received an Aid to the Disabled grant for herself and an AFDC grant for OMEGA MINOR. Said AFDC grant was cancelled in January, 1967, while OMEGA MINOR was

enrolled as a full time student at South East Junior College, Chicago, Illinois. The combined grants amounted to $171.19 in December, 1966.

d. The AFDC grant in the monthly amount of $87.94 was cancelled for the stated reason that OMEGA MINOR had become 18 years of age and was not a full time high school, vocational or technical training school student.

e. An Aid to the Disabled grant in the monthly amount of $123.25 was then issued to, and took account only of the needs of plaintiff GEORGIA TOWNSEND. A General Assistance grant in the monthly amount of $34.54 was issued to OMEGA MINOR in January, 1967, and was cancelled in May, 1967.

f. Plaintiffs have existed since June, 1967 on plaintiff GEORGIA TOWNSEND'S Aid to the Disabled grant from the Illinois and Cook County Departments of Public Aid as administered by defendants.

g. At the time of cancellation of the AFDC grant in January, 1967, plaintiffs were receiving $171.19 per month. Thereafter, since June, 1967, plaintiffs received $123.25 per month. This is a cut of 28% in the family's income, and said cut in income was, and is, in violation of federal law.

h. Plaintiffs are now receiving $116.00 per month from plaintiff GEORGIA TOWNSEND'S Aid to the Disabled grant. Both GEORGIA TOWNSEND and OMEGA MINOR subsist on said grant. Both plaintiffs are suffering irreparable injury and harm and are in a state of semi-starvation.

i. Plaintiff OMEGA MINOR has at all times since January, 1967, been a full time student at South East Junior College, Chicago, Illinois.

j. On September 26, 1968, with the assistance of counsel, plaintiffs made another application for an AFDC grant.

k. Said application for AFDC benefits was denied on November 8, 1968, by the Cook County Department of Public Aid as administered by William

H. Robinson, preceding Director to defendant DAVID L. DANIEL, on the grounds that plaintiff OMEGA MINOR was not in attendance at a vocational or technical school as required by the state wide regulation, Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual.

l. Plaintiffs filed a statutory appeal with the Illinois Department of Public Aid. On November 21, 1968, a hearing was held before the Illinois Department of Public Aid.

m. On December 11, 1968, defendant HAROLD O. SWANK, Director, Illinois Department of Public Aid, rendered his decision upholding the denial of AFDC benefits to plaintiffs by the Cook County Department of Public Aid by interpreting the Illinois statute as excluding a vocational course of study or any course of study pursued at a college or university as proper qualification for AFDC benefits. A copy of the decision of defendant HAROLD O. SWANK in plaintiffs' appeal is attached hereto and marked "Exhibit A".

n. Plaintiffs have suffered severe and irreparable injury to their health and well being, including inadequate food, clothing, shelter, and the inability to pay debts, and to their family life as a result of defendants' operation and enforcement of the Illinois statute and regulation complained of herein, and plaintiffs will continue to suffer the same until relief is granted by this court.

5. The Illinois statute and regulation in question herein are in direct conflict with and in violation of Title 42, U.S.C., 602(a) which provides for AFDC benefits to the age of 21 for students "regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

a. A State which participates in the federally finance AFDC program must submit a plan to the Secretary of Health, Education and Welfare (hereinafter referred to as HEW) which must conform

with the Social Security Act and with rules and regulations promulgated by HEW.

b. Title 42, U.S.C. Section 602(a)(9) requires: "(a) A State plan for aid and services to needy families with children must (9) provide . . . that all individuals wishing to make application shall have opportunity to do so, and that *aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals.*" (Emphasis added).

c. Title 42, U.S.C., Section 602(a) defines a "dependent child" as:

> Title 42 United States Code SS406(a)(1) and (2).
>
> "(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care . . ., and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) *a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training* designed to fit him for gainful employment;" (Emphasis Added).

d. Plaintiff OMEGA MINOR is and has been a dependent child and is and has been an eligible individual within the meaning of the above cited federal statutes, and she and her mother GEORGIA TOWNSEND are entitled to have an AFDC grant furnished to them with reasonable promptness.

e. The above cited federal statutes are declared supreme by Article VI, Clause 2, *Supremacy*, of the United States Constitution.

6. Chapter 23, Section 4-11, *Child Age Eligibility*, Illinois Revised Statutes, 1967, and Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual are unconstitutional on their face and as applied to plaintiffs because they are in violation of the Due

Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution insofar as they deny benefits to plaintiffs, and the class they represent, who are otherwise eligible children in a college or university and their representative, while granting AFDC benefits to children of the same age and otherwise eligible who are attending a high school, vocational or technical training school.'

a. The above cited Illinois statute and regulation creates a classification which arbitrarily, unreasonably and in contradiction to the express purpose of the AFDC program, discriminates against potential recipients who are full time students in a college or university by distinguishing them from high school, vocational or technical training school students and by excludng them from benefits granted to or for the support of high school, vocational or technical training school students.

b. Plaintiffs would be entitled to an AFDC grant until plaintiff OMEGA MINOR was 21 years of age if she was enrolled as a full tine student in a high school, vocational or technical training school.

c. The purpose of granting benefits to recipients who are students until they are twenty-one years of age is to encourage needy children of indigent families to gain the education they need to attain their capacities for self-support and responsible citizenship. While on the other hand, the exclusion of college and university students by the Illinois statute and regulation clearly thwarts the purpose of granting said AFDC benefits. Such an exclusion is irrational and irreconcilable with the basic purpose of the AFDC program.

7. Plaintiffs have no adequate remedy at law.

8. Defendant HAROLD O. SWANK is the Director of the Illinois Department of Public Aid. He is responsible for adopting and implementing all the policies, rules and regulations of the Illinois Department of Public Aid, including Section 150 of that Department's Categorical Assistance Manual.

9. Defendant DAVID L. DANIEL is the Director of the Cook County Department of Public Aid. Subject to regulations issued by the State Department, he is responsible for administration of all aspects of Public Aid in Cook County, including implementation, with respect to plaintiffs, of Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual.

10. Plaintiffs' request for an AFDC grant has been denied by the defendants. Further exhaustion of administrative remedies is not required in this case since in view of the interpretation of defendant HAROLD O. SWANK in his administrative decision in plaintiffs' appeal, further attempt would be furtile. Plaintiffs have no adequate administrative remedy for the regulation. Exhaustion is likewise not required in actions brought under the Civil Rights Act.

11. Plaintiffs seek judgment for $1,988.70 in their favor and against defendants for the amount of public assistance improperly withheld since January, 1967, to this date, and which will be withheld in the future until the judgment and an injunction by this court is entered ordering defendants to do otherwise. A schedule of benefits withheld is attached hereto and marked "Exhibit B".

12. Plaintiffs GEORGIA TOWNSEND and OMEGA MINOR bring this class action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a)(b) (2) and (b) (3) of the Federal Rules of Civil Procedure. The members of the class similarly situated are children between the ages of 18 and 21 and their parents or legal guardians who are denied A.F.D.C. benefits by the defendants solely because said children are or could be, full time college or university students as opposed to being full time high school, trade school or vocational school students. All members of the class are residents of the State of Illinois. The members of this class are so numerous as to make joinder impracticable; there are questions of law and fact common to the class; the claims representative of the parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of

the class; and the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

WHEREFORE, Plaintiffs pray:

(A) That a three judge court be convened to hear and determine this cause, pursuant to Title 28, U.S.C., Section 2281 and 2284.

(B) That this court enter a declaratory judgment pursuant to Title 28, U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, that Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual and Chapter 23, Section 4-1.1, Ill. Rev. Stat., 1967, ciolate Article VI and the Fourteenth Amendment of the United States Constitution insofar as they exclude from the Illinois AFDC plan persons declared eligible by Title 42, U.S.C. Section 606 (a).

(C) That this court enjoin defendants, their sucessors, agents and employees from failing or refusing to make public assistance payments under the AFDC program to or for the benefit or support of any otherwise eligible child who is between the ages of 18 and 21 and a full time student at a college or university, and that this court grant such an injunction temporarily, pending the outcome of this case.

(D) That this court enter judgment for $1,988.70 in favor of plaintiffs and against defendants as damages for public assistance payments improperly withheld from plaintiffs.

(E) That this court grant plaintiffs such other and further relief as may appear just, including damages for defendant's unlawful past refusal to grant plaintiffs the AFDC payments they are entitled to receive.

/s/ Georgia Townsend
Individually and on behalf of her dependent daughter, OMEGA MINOR

/s/ Omega Minor
Individually

/s/ Michael F. Lefkow
One of Attorneys for Plaintiffs
THAD B. EUBANKS, MICHAEL F. LEFKOW, and ARNOLD D. BREYER
Attorneys for Plaintiffs
Legal Aid Bureau
4622 S. Martin L. King Drive
Chicago, Illinois 60653
Telephone 548-6700

[*Duly sworn to by Georgia Townsend, Omega Minor jurat omitted in printing (all in italics)*]

"EXHIBIT A"

ILLINOIS DEPARTMENT OF PUBLIC AID
Room 2000—160 North La Salle Street
Chicago, Illinois 60601

December 11, 1968

FInancial 6-2000 Ext. 615
APPEAL 66-160

CERTIFIED MAIL
Mrs. Georgia Townsend
3938 S. Lake Park Avenue
Chicago, Illinois

RE: ADC 203-48272

Dear Mrs. Townsend:

The Illinois Department of Public Aid has considered your written Notice of Appeal filed on November 8, 1968 from a decision of the Cook County Department of Public Aid in denying your application for public aid under the Aid to Dependent Children program filed on behalf of your daughter, Omega Minor, age 19.

On November 8, 1968, the county department denied the application filed on September 26, 1968, on the ground that your daughter was over the age of 18 and not in attendance at a vocational or technical training school as required by agency regulation. It based its decision upon Article IV, Section 4-1.1 of the Illinois Public Aid Code and the Department's Categorical Assistance Manuel Chapter 150.

Your daughter is in regular full-time attendance at the Chicago City College which is operated and maintained by a governmental agency of the City of Chicago under the jurisdiction of the State of Illinois. It offers two-year preparatory courses at college level and maintains eight different campuses located throughout the City of Chicago.

It was your contention, through your legal counsel, that your daughter is being deprived of her constitutional

rights in this matter; that she is eligible for public aid under the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, and the Federal Social Security Act, Title 42, U.S.C., Section 406(a)(1) and (2). Your legal counsel submitted a written brief in support of his case. His primary contention is that the provisions of the Illinois Public Aid Code and its regulations relied upon by the county department are discriminatory to your daughter under the facts in the case. Article IV, Section 4-1.1 of the Illinois Public Aid Code reads as follows:

> "CHILD AGE ELIGIBILITY.) The child or children must be under 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. 'Regular Attendance', as used in this Section, means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status."

The Department's Categorical Assistance Manual Chapter 150, reads, in part, as follows:

> "AGE REQUIREMENTS
>
> "Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)"

The Department is bound by the age requirements as set forth by the General Assembly in Section 4-1.1 recited above, and the exception contained therein to include only those over the age of 18 in high school, vocational, or technical training schools. We are not cognizant of any power or authority of our own to enlarge the scope

of the Act to include the matter of the case before us. Under such concept, we will uphold the decision reached by the county department in this case.

Based on the foregoing, the decision of the Cook County Department of Public Aid in denying your application for public aid under the Aid to Dependent Children program on behalf of your daughter, Omega Minor on November 8, 1968 is affirmed. As was explained at the hearing, the Department's decision is subject to review only under the Illinois Administrative Review Act.

Very truly yours,

/s/ Harold O. Swank
HAROLD O. SWANK
Director

HGS:cc

cc: Mr. Arnold D. Breyer
Attorney at Law
Michael F. Lefkow
Attorney at Law

## "EXHIBIT B"

### SCHEDULE OF AFDC BENEFITS WITHHELD AS OF FEBRUARY, 1969

AFDC Personal Allowance For Child; 13-20 years old (Two in household):

Jan. 1967 through Nov. 1967. 11 mo. @ $42.22/mo. = $464.42
Dec. 1967 through June 1968. 7 mo. @ $42.78/mo. = 299.46
July 1968 through Feb. 1969. 8 mo. @ $43.81/mo. = 350.48
$1114.36

Note: Omega Minor recieved General Assistance from Jan. 1967 through May 1967:

4 mo. @ $34.54/mo. = -138.16
Sub-total 976.20 976.20

Transportation (School Carfare):

Jan. 1967 through Feb. 1969 25 mo. @ $12.00/mo. = $300.00 300.00

Lunches

Jan. 1967 through Feb. 1969 25 mo. @ $ 4.50/mo. = $112.50 112.50

Registration and School Fees

Jan. 1967 through Feb. 1969. 6 semesters @ $10/sem = $60 60.00

School Books and Supplies

Jan. 1967 through Feb. 1969 6 semesters @ $40/sem = 240.00 240.00

Educational Allowance

Jan. 1967 through Feb. 1969 25 mo. @ $12/mo. = $300.00 300.00
$1,988.70

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son JEROME ALEXANDER; all individually and on behalf of all other persons similarly situated, PLAINTIFFS

GEORGIA TOWNSEND, individually and on behalf of her dependant daughter OMEGA MINOR, and OEGA MINOR, individually, and as members of the class, INTERVENORS

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid; WILLIAM H. ROBINSON, Director, Cook County Department of Public Aid; MAE WITHERS, Supervisor, Woodlawn District Office, Cook County Department of Public Aid; WILLIAM G. CLARK, Attorney General of the State of Illinois, DEFENDANTS

MEMORANDUM OPINION—March 28, 1969

Motion to Intervene as Plaintiffs

Plaintiffs' Motion to Convene a Three-Judge Court

Defendants' Motion to Dismiss

This is a class action suit brought by Loverta Alexander, until November 1, 1968, a recipient of Aid to Families with Dependant Children, (hereafter A.F.D.C.), a federally assisted welfare program administered by the Illinois Department of Public Aid, individually and on behalf of her son Jerome Alexander, who is eighteen years old and a full time student at Wilson Junior College, an accredited Junior College in Chicago, Illinois. On their own behalf and for all those similarly situated, plaintiffs are seeking declaratory and injunctive relief.

Alleging a deprivation of their rights, 42 U.S.C. § 1983, plaintiffs request the convening of a three-judge federal court pursuant to 28 U.S.C. §§ 2282, 2284 in order to declare unconstitutional Ill. Rev. Stat. Ch. 23, § 4-1.1 and Illinois Department of Public Aid Regulation 150. Plaintiffs also seek injunctive relief restraining defendants from enforcing the challenged statute and regulation. Defendants have moved to strike and dismiss this complaint.

In an action of this kind, it is the duty of a single-judge court to make an initial determination as to the substantiality of the constitutional queston raised by the plaintiffs, as well as to see whether the complaint formally alleges a basis for equitable relief and is otherwise appropriate for hearing by a three-judge court. *Idlewild Bon Voyage Liquor Corp.* v. *Epstein*, 370 U.S. 713 (1962); *Landry* v. *Daley*, 280 F. Supp. 929, 935 (N.D. Ill. 1967). A constitutional question will be considered an insubstantial one if it is "obviously without merit or because its unsoundness is so clearly demonstrated by previous decisions of the Supreme Court as to foreclose the subject." *Id.* at 935.

Plaintiffs contend that the state statute and regulation in question unconstitutionally discriminate against college or university students. The challenged state statute states the eligibility requirements which a child must meet in order to be a recipient of A.F.D.C. payments. It provides:

> "The child or children must be under age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school." Ill. Rev. Stat. Ch. 23, § 4-1.1.

Regarding age requirements, Illinois Department of Public Aid Regulation 150 provides, in pertinent part:

> "Dependant children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational training school. (This does not include 18 through 20 year old children in college)."

Plaintiffs submit that these laws violate their right to equal protection as stated in the 14th Amendment to the United States Constitution. Under the current legal framework, one person, age 18 through 20, attending a vocational or technical training school may be eligible for A.F.D.C. payments in Illinois, while another person in the same age bracket and financial condition and with the same family background but who attends a college or university, would not be eligible. Whether the different treatment afforded these two similarly situated persons is rational and constitutional or arbitrary and unconstitutional need not, indeed, must not be settled here. Suffice it to say, the constitutional question presented is a substantial one and not foreclosed by previous judicial decision.

Further, in the Social Security Act, 42 U.S.C. § 606 (a), Congress has provided that welfare payments may be extended beyond age eighteen for students regularly attending college or vocational school in accordance with standards established by the Secretary of Health, Education and Welfare. Those standards are set forth in the Handbook of Public Assistance and state, in part:

> "Within the age limit set by the state, there should be a choice of attending a school, college or university or taking a course of vocational or technical training for gainful employment." (Complaint, Appendix 1, at p. 2).

Plaintiffs' second basic contention is that Illinois' law is not in conformity with the federal requirements and, therefore, in violation of the supremacy clause of the United States Constitution, Article VI, Clause 2. For this reason as well, plaintiffs present a substantial constitutional question deserving to be heard by a three-judge court.

Defendants have raised various objections to the convening of a three-judge court. For instance, they suggest that plaintiffs have neither attempted to use or exhaust state administrative remedies. *Sweeny* v. *State Board of Public Assistance*, 36 F. Supp. 171, aff'd, 119 F.2d 1023 (3d Cir. 1941), cert. denied, 314 U.S. 611

(1941). The short answer to this point is that plaintiffs who bring an action under the Civil Rights Act, 42 U.S.C. § 1983 which raises a substantial constitutional question are not required to exhaust state administrative remedies before a three-judge court will be convened. *King* v. *Smith*, 392 U.S. 309, 312 (1968); *Damico* v. *California*, 389 U.S. 416, 417 (1967). Defendants next seem to suggest that plaintiffs arguments based on the equal protection clause of the Fourteenth Amendment and the supremacy clause have been repudiated in *Snell* v. *Wyman*, 281 F. Supp. 853 (S.D. N.Y. 1968) and *Metcalf* v. *Swank*, 293 F. Supp. 268 (N.D. Ill. 1968). As defendants realize, however, those cases dealt with phases of public assistance different than those challenged here. They are no authority for the view that the particular contentions which plaintiffs raise have been considered and rejected. Significantly, in each of the cases cited by defendants, a three-judge court was convened to hear the merits of the constitutional challenge. Next, defendants contend that plaintiffs, in challenging the constitutionality of a Congressional act failed to comply with Local Rule 22, U.S.D.C., N.D. Ill., by failing to join the Secretary of Health, Education, and Welfare. There is no merit in this position either. Plaintiffs are not challenging but relying on a federal statute, and, consequently, Local Rule 22 is not applicable. Secondly, the Secretary of Health, Education and Welfare is not required to be joined under the Federal Rules of Civil Procedure because complete relief can be afforded in his absence and his interest in the subject matter of this litigation will not be affected by this litgaton nor will any parties be subjected to multiple or inconsistence litigation. Rule 19, Fed. R. Civ. P. Finally, defendants raise a series of objections to the convening of a three-judge court the thrust of which is that plaintiffs are eligible for other forms of financial assistance, including welfare payments and educational scholarships and that the program adopted by Illinois has been approved by the Secretary of HEW in accordance with federal regulations, 45 CFR ch. II, pt. 201.3(c). Neither of these contentions precludes the convening of a three-judge

court. Whether or not plaintiffs are eligible for assistance from other legitimate programs is irrelevant to their claim that they have been discriminated against under the challenged aid program. Further, the executive branch cannot validate a welfare plan promulgated under an unconstitutional state statute and regulation.

A short while before disposition was to be made on the issue presented by the plaintiffs, Georgia Townsend and her daughter, both individually and as members of the class described in the original complaint moved for leave to be added as additional parties in the instant cause. They subsequently filed an intervening complaint which is similar to that filed originally. In addition to seeking the same relief sought by the original plaintiffs, intervening plaintiffs also ask for $1,988.70 as damages for public assistance payments improperly withheld.

Defendants have moved to strike and dismiss this intervening complaint for the same reasons they urged upon us with regard to the original complaint. Their contentions are rejected again for the reasons stated earlier. A new contention raised by defendants is that the Illinois Constitution Art. IV, § 26, prohibits suits against the state, state agencies, and state officials. Defendants cite two federal cases in support: *Truitt* v. *State of Illinois*, 278 F.2d 819 (7th Cir. 1960), cert. denied, 364 U.S. 866 (1960) and *Great American Insurance Co.* v. *Stilley*, 212 F. Supp. 303 (E.D. Ill. 1962). In the latter district court case, the court ruled directly contrary to defendants' contention. It held that an action against a state officer on the ground that he violated plaintiff's rights while acting under an unconstitutional statute is not a suit against the state and is not prohibited by Article IV, § 26 of the Illinois Constitution. *Id.* at 304, 306. In *Truitt*, the Seventh Circuit affirmed a judgment of lower court which had dismissed the suit for want of jurisdiction. In that action, plaintiff had sued the State of Illinois, not an agency or an official. The court merely recognized that the state did not in fact and could not in law under its constitution consent to be sued. *Truitt* v. *State of Illinois*, 278 F. Supp. 819 at 820. In the instant action, plaintiffs have brought

suit against individual persons for alleged deprivations of rights. This type of suit is quite properly brought against these defendants. Indeed, some of these defendants are presently and properly parties defendant to another constitutional challenge to another aspect of the Illinois Public Aid Code. See, e.g., *Metcalf* v. *Swank*, 293 F. Supp. 268 (N.D. Ill. 1968).

The motion to intervene will be granted. The motions to convene a three-judge court to hear and decide the constitutional challenges will be granted as well. The motions to strike and dismiss will be denied.

ENTER:

/s/ Abraham L. Marovitz
ABRAHAM L. MAROVITZ

Mar. 28, 1969

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son JEROME ALEXANDER; all individually and on behalf of all other persons similarly situated

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid; WILLIAM H. ROBINSON, Director, Cook County Department of Public Aid; MAE WITHERS, Supervisor, Woodlawn District Office, Cook County Department of Public Aid; WILLIAM G. CLARK, Attorney General of the State of Illinois

ANSWER OF HAROLD O. SWANK TO THE COMPLAINT AS AMENDED OF LOVERTA ALEXANDER AND JEROME ALEXANDER—Filed May 16, 1969

Comes now HAROLD O. SWANK, Director of the Department of Public Aid of the State of Illinois, one of the defendants herein, by WILLIAM J. SCOTT, the Attorney General of the State of Illinois, his attorney, and answering the complaint as amended of LOVERTA ALEXANDER, individually and on behalf of her minor son, Jerome Alexander, all individually and on behalf of all other persons similarly situated, says:

1.

Defendant denies the allegations in paragraph 1 of plaintiffs' complaint that plaintiffs, or either of them, have a cause of action pursuant to the enactments, or any of same, alleged in said paragraph, against this defendant.

2.

(a) Defendant admits the allegations in paragraph 2 (a) of plaintiffs' complaint.

(b) Defendant admits the allegations in paragraph 2(b) of plaintiffs' complaint that plaintiff, Jerome Alexander, was at the time of the filing of plaintiffs' complaint eighteen years of age and that he and his mother received A.F.D.C. benefits until November 1, 1968, but this defendant has no knowledge or information sufficient to form a belief as to the truth of the other allegations in said paragraph.

(c) Defendant denies the allegation in paragraph 2(c) that the plaintiffs are entitled to bring any action pursuant to the Rule therein mentioned, and as to the remaining allegations in said paragraph this defendant has no knowledge or information sufficient to form a belief as to the truth of said remaining allegations.

3.

(a) This defendant admits that he is the Director of the Department of Public Aid of the State of Illinois, as alleged in paragraph 3(a) of said complaint.

Further answering this paragraph, this defendant says that the regulation therein referred to is in accordance with the statutes of the State of Illinois.

4.

Defendant admits the allegations in subparagraphs (a) and (b) of this paragraph.

5.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

6.

Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph.

7.

Defendant denies the allegations in this paragraph.

(a) Defendant denies the allegations in this paragraph.

(b) Defendant admits the first sentence of this paragraph but denies the remainder of this paragraph.

(c) Defendant admits that plaintiff Jerome Alexander is and should be eligible for full time employment, but denies the remaining allegations in this paragraph.

8.

Defendant denies the allegations in this paragraph and the subparagraphs of this paragraph.

9.

Defendant denies that plaintiffs are entitled to the relief sought herein.

10.

Defendant denies the allegations in this paragraph and denies that the plaintiffs are entitled to any of the relief sought herein, or any of the paragraphs or subparagraphs of plaintiffs' prayer.

11.

Further answering plaintiffs' complaint this defendant says that upon the termination of the A.F.D.C. grants to the plaintiffs, that the said plaintiffs immediately started receiving monthly General Assistance, plus clothing allowances as needed, and are still receiving same. That in addition thereto, Jerome Alexander receives monthly Social Security benefits.

/s/ William J. Scott
Attorney General
State of Illinois
160 North LaSalle Street
Chicago, Illinois 60601
Financial 6-2000
Attorney for Defendant
Harold O. Swank

Bernard Genis
Assistant Attorney General
Of Counsel

[Affidavit of Service (Omitted in Printing)]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son, JEROME ALEXANDER; GEORGIA TOWNSEND, individually and on behalf of her dependent daughter OMEGA MINOR, and OMEGA MINOR, individually, and all on behalf of all OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid and DAVID L. DANIEL, Director, Cook County Department of Public Aid, DEFENDANTS

ANSWER OF HAROLD O. SWANK TO THE COMPLAINT OF GEORGIA TOWNSEND AND OMEGA MINOR—Filed May 16, 1969

COMES NOW HAROLD O. SWANK, Director of the Department of Public Aid of the State of Illinois, one of the defendants herein, by WILLIAM J. SCOTT, the Attorney General of the State of Illinois, his attorney, and answering the Complaint of GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, individually and both as members of the class described in the original Complaint, says:

I. Defendant denies that this is a proper action for declaratory judgment or for injunctive relief, and denies the remaining allegations in Paragraph One of Plaintiff's Complaint.

a) Defendant admits that *Title 42, Section 606 (a); Chapter 23, Ill. Rev. Stat., 1967, s. 4-1.1,* and the Illinois regulation, are correctly stated, but denies that the State Statute or the State Regulation are in conflict with the Federal Law, and denies the

remaining allegations in said sub-paragraph and denies that the plaintiffs or either of them are entitled to the relief sought.

b) Defendant denies the allegations in this sub-paragraph.

II. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

III. Defendant denies that plaintiffs or either of them are entitled to the convening of a three-judge court.

IV. Defendant admits the allegations in this paragraph.

a) This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations in this sub-paragraph.

b) This defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations in this sub-paragraph.

c) Defendant admits the allegations in this sub-paragraph, and further answering same, says that the said GEORGIA TOWNSEND is still receiving an Aid to the Disabled grant.

d) Defendant admits the allegation in this sub-paragraph.

e) Defendant denies that the Aid to the Disabled grant in said paragraph mentioned took account only of the needs of plaintiff, GEORGIA TOWNSEND.

f) Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations in this sub-paragraph.

g) Defendant admits the allegation in the first sentence of this sub-paragraph, but further answering this sentence says that upon the cancellation of the AFDC grant therein referred to, GEORGIA TOWNSEND started receiving an Aid to the Disabled grant of One Hundred Twenty-three and 25/100 ($123.25) Dollars per month, while OMEGA MINOR started receiving a general assistance grant of

Thirty-four and 50/100 ($34.50) Dollars per month, for a total of One Hundred Fifty-seven and 79/100 ($157.79) per month, which was just $13.40 less than they had been receiving under the AFDC grant of One Hundred Seventy-one and 19/100 ($171.19) Dollars per month. Defendant denies the remainder of this sub-paragraph.

h) Defendant denies the first sentence in this sub-paragraph and as to the remainder of said sub-paragraph this defendant has no knowledge or information sufficient to form a belief as to the truth of said remaining allegations.

i) Defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations of this sub-paragraph.

j) Defendant admits the allegations of this sub-paragraph.

k) Defendant admits the allegations of this sub-paragraph.

l) The defendant admits the allegations of this sub-paragraph.

m) The defendant admits the allegation of this sub-paragraph.

n) Defendant denies the allegations of this sub-paragraph.

V. Defendant denies the allegations in this paragraph.

a) The defendant admits the allegations in this sub-paragraph, and further answering same, says that the State of Illinois did submit a plan to the Secretary of HEW, that said plan did conform with the social Security Act and with the rules and regulations promulgated by HEW, that the said Department of HEW approved said plan and that the benefits received by the plaintiffs have been in accordance with said plan.

b) Defendant admits the allegations in this sub-paragraph.

c) Defendant admits the allegations in this subparagraph.

d) Defendant denies the allegations in this subparagraph and further answering same says that when OMEGA MINOR became 18 years of age and completed high school that she ceased being a dependant child and that therefore neither she nor her mother were thereafter eligible for AFDC.

e) Defendant says that there is no conflict between the Federal and the State Statute.

VI. Defendant denies the allegations in this paragraph.

a) Defendant denies the allegations in this subparagraph.

b) Defendant admits the allegations in this subparagraph.

c) Defendant denies the allegations in this subparagraph.

VII. Defendant denies the allegation in this paragraph.

VIII. Defendant admits he is the Director of the Department of Public Aid of the State of Illinois. Further answering this paragraph the defendant says that it is the State Legislature of the State of Illinois that adopts and formulates all the policies of the Department of Public Aid of the State of Illinois and that this defendant merely implements same.

X. Defendant admits the first sentence, but denies the remaining allegations in this paragraph.

XI. Defendant denies that plaintiffs are entitled to judgment against this defendant in the amount claimed or in any amount, and denies that any sums have been improprely withheld.

XII. Defendant denies that plaintiffs are entitled to bring this class action according to the rule therein mentioned, and denies the remaining allegations in said paragraph.

Defendant denies that plaintiffs are entitled to any of the relief that they seek.

/s/ William J. Scott
Attorney General
State of Illinois
Attorney for Defendant,
HAROLD O. SWANK

BERNARD GENIS
Assistant Attorney General
Of Counsel

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

George G. ?????? being first duly sworn on oath, deposes and says that he served the foregoing Answer upon the following named parties by enclosing a true copy thereof, in an envelope, postage prepaid, addressed to:

MELVIN B. GOLDBERG
6020 S. University Avenue
Chicago, Illinois 60637
Attorney for LOVERTA and
JEROME ALEXANDER

MICHAEL F. LEFKOW
4622 S. Martin Luther
King Drive
Chicago, Illinois 60653,
An Attorney for GEORGIA
TOWNSEND and OMEGA MINOR

and

DEAN HILTON
Assistant States Attorney
Chicago Civic Center, 5th Floor
Chicago, Illinois,
Attorney for Defendants
DANIEL and WITHERS.

Said envelopes were deposited in the United States Mail Chute at 160 North La Salle Street, Chicago, Illinois, 60601, at the hour of 1:00 p.m. on the 16th day of May, A. D. 1969.

/s/ [Illegible]

Subscribed and sworn to before me this 16 day of May, A. D. 1969.

/s/ Mary B. Sullivan
Notary Public

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENORS

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL., DEFENDANTS

Complaint for Declaratory Judgment and Injunction

PLAINTIFFS MOTION FOR SUMMARY JUDGMENT AND DEFAULT JUDGMENT—Filed June 2, 1969

Plaintiffs LOVERTA ALEXANDER and JEROME ALEXANDER, by their attorney, Melvin B. Goldberg, move this court to enter Summary Judgment in their favor against defendant HAROLD O. SWANK and Default Judgment in their favor against defendants DAVID L. DANIELS and MAE WITHERS, and in support thereof state as follows:

I

Defendants DANIELS and WITHERS have failed to answer or otherwise respond to plaintiffs' complaint within the time allotted by the Court in its order of April 3, 1969.

II

The facts disclosed by the pleadings and accompanying affidavits and exhibits, together with Plaintiffs' Affidavits attached hereto, show that there is no fact in dispute in this action which is material to a disposition thereof.

WHEREFORE, plaintiffs pray that their motion for summary judgment against defendant HAROLD O. SWANK be granted and that their motion for default judgment against defendants DAVID L. DANIELS and MAE WITHERS be granted and that they have judgment against said defendants as prayed in the Complaint.

Respectfully submitted,

/s/ Melvin B. Goldberg
Attorney for Plaintiffs
Mandel Legal Aid Clinic
6020 South University
Chicago, Illinois 60637
Telephone: FAirfax 4-5181

Of Counsel:

Stanley A. Bass, Esq.
Community Legal Council
116 South Michigan Avenue
Chicago, Illinois
Carl Rachlin, Esq.
Scholarship, Education and
Defense Fund for Racial
Equality, Inc.
164 Madison
New York, New York

[*Duly sworn to by Penelope A. Downs jurat omitted in printing (all in italics)*]

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

AFFIDAVIT

JEROME ALEXANDER, being first duly sworn on oath, deposes and says:

1) He currently resides with his mother, the plaintiff LOVERTA ALEXANDER at her residence in Chicago, Illinois and has done so continuously throughout his life.

2) He is currently a full time student at Wilson Junior College, located in Chicago, Illinois and has been such since his enrollment in September 1968.

/s/ Jerome Alexander
Affiant

Subscribed and Sworn to before me this 28th day of May, 1969.

/s/ Vera G. Jackson
Notary Public

STATE OF ILLINOIS )
) ss
COUNTY OF COOK )

AFFIDAVIT

LOVERTA ALEXANDER, being first duly sworn on oath deposes and says:

1) Prior to the November 1, 1968 termination of Aid to Families with Dependent Children benefits my son, JEROME ALEXANDER, and I received the following amounts of assistance:

$134.92 per month, A.F.D.C. benefits
46.20 per month, Old Age Survivors Insurance Benefits

for a total amount of $181.12 per month.

2) Since the November 1, 1968 termination of A.F.D.C. benefits my son, JEROME ALEXANDER has received $46.60 per month in Old Age Survivors Insurance benefits and I have received $111.00 per month in general assistance benefits. This amount is $23.52 less per month than the total amount received under the A.F.D.C. grant.

/s/ Loverta Alexander
Affiant

Subscribed and Sworn to before me this 28th day of May, 1969.

/s/ Vera G. Jackson
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENORS

*v.*

HAROLD O. SWANK, ET AL., DEFENDANTS

INTERVENING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFAULT JUDGMENT—Filed June 17, 1969

Now come intervening plaintiffs GEORGIA TOWNSEND and OMEGA MINOR, by their attorneys, Michael F. Lefkow, Thad B. Eubanks and Arnold Breyer, and move this court to enter Summary Judgment in their favor against defendant HAROLD O. SWANK and Default Judgment in their favor against defendants DAVID L. DANIEL and MAE WITHERS, and in support thereof state as follows:

I

Defendants DANIELS and WITHERS have failed to answer or otherwise respond to plaintiffs' complaint within the time allotted by the Court in its order of April 3, 1969.

II

The facts disclosed by the pleadings and accompanying affidavits and exhibits, together with Plaintiffs' Affidavits attached hereto, show that there is no fact in dispute in this action which is material to a disposition thereof.

WHEREFORE, plaintiffs pray that their motion for summary judgment against defendant HAROLD O. SWANK be granted and that they have judgment against said defendants as prayed in the Complaint.

/s/ Michael F. Lefkow
One of Attorneys
for Intervening Plaintiffs

Michael F. Lefkow and Stanley A. Bass
Community Legal Counsel
116 South Michigan Avenue
Chicago, Illinois 60603
726-0157

Thad B. Eubanks and Arnold D. Breyer
Legal Aid Bureau
4622 Martin Luther King Drive
Chicago, Illinois
548-6700

Received a copy of the above notices this ____ day of _____, 1969, before _____ P.M.

_____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENORS

*v.*

HAROLD O. SWANK, ET AL., DEFENDANTS

AFFIDAVIT OF GEORGIA TOWNSEND

GEORGIA TOWNSEND, being first duly sworn on oath, deposes and says:

1. I am one of the intervening plaintiffs in the above entitled cause.

2. I am 40 years old, being born on October 20, 1928.

3. I am a citizen of the United States and a resident of the State of Illinois, County of Cook and City of Chicago.

4. I am a disabled individual. I have no income, resources, support or maintenance other than payments to me of an Aid to the Disabled grant by the Illinois and Cook County Departments of Public Aid in the monthly amount of $120.50.

5. I am the mother and sole support of my daughter OMEGA MINOR, who was born December 19, 1948.

6. I received an Aid to Families with Dependent Children (A.F.D.C.) grant on behalf of myself and my dependent daughter OMEGA MINOR from December, 1953, to April, 1960. From April 1963, to December 1966, I received an Aid to the Disabled grant for myself and an A.F.D.C. grant on behalf of OMEGA MINOR. The combined grants amounted to $171.19 in December, 1966.

7. The A.F.D.C. grant in the monthly amount of $87.94 was cancelled by defendants effective January, 1967, while OMEGA MINOR was enrolled as a regular student at South East Junior College, Chicago, Illinois,

for the stated reason that OMEGA MINOR had become 18 years of age and was not a student in regular attendance at a high school, vocational or technical training school.

8. An Aid to the Disabled grant was then issued to me in the monthly amount of $123.25. This grant took account only of my needs.

9. A General Assistance grant in the monthly amount of $34.54 was issued to OMEGA MINOR in January, 1967, and was cancelled in May, 1967.

10. My daughter OMEGA MINOR has at all times since January, 1967, been a student in regular attendance at South East Junior College, Chicago, Illinois.

11. My daughter and I have existed since June, 1967, solely on my Aid to the Disabled grant.

12. The termination of my daughter's A.F.D.C. grant by defendants cut my family's income 28%.

13. From January, 1967, to May. 1969, the A.F.D.C. benefits withheld by defendants total $2,205.63 and the same is claimed as damages already accrued. The monthly rate of A.F.D.C. benefits withheld is now $72.31 per month, exclusive of registration and school fees and school books and supplies. A schedule of benefits withheld is attached to and hereby incorporated by reference into this affidavit.

/s/ Georgia Townsend
Affiant

Subscribed and Sworn to before me this 6th day of June, 1969.

/s/ Michael F. Lefkow
Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENORS

*v.*

HAROLD O. SWANK, ET AL., DEFENDANTS

AFFIDAVIT OF OMEGA MINOR

OMEGA MINOR, being first sworn on oath, deposes and says:

1. I am one of the intervening plaintiffs in the above entitled cause.

2. I am 20 years old, being born December 19, 1948.

3. I am a citizen of the United States and a resident of the State of Illinois, County of Cook, and City of Chicago.

4. I graduated from DuSable High School in August, 1966.

5. I enrolled as a regular student at South East Junior College in September, 1966. I have been a student in regular attendance at that institution since that time.

6. I am pursuing a course of study leading to the profession of teaching. I plan to teach in elementary schools upon obtaining my bachelor of arts degree.

7. I incorporated herein by reference and make a part of my affidavit all facts set out in the affidavit of my mother GEORGIA TOWNSEND.

8. From January, 1967, to May, 1969, the A.F.D.C. benefits withheld from me by defendants total $2,205.63, and that amount I claim as damages already accrued. The monthly rate of A.F.D.C. benefits withheld from me is now $72.31 per month, exclusive of registration and school fees and school books and supplies. A schedule

of benefits withheld is attached to and hereby incorporated by reference into this affidavit.

/s/ Omega Minor
OMEGA MINOR
Affiant

Subscribed and Sworn to before me this 6th day of June, 1969.

/s/ Michael F. Lefkow
Notary Public

SCHEDULE OF A.F.D.C. BENEFITS WITHHELD AS OF MAY, 1969.

A.F.D.C. Personal Allowance for Child; 13-20 years old (Two in household):

Jan. 1967 through Nov. 1967 11 mo. at $42.22/mo. = $464.42
Dec. 1967 through June 1968 7 mo. at $42.78/mo. = 299.46
July 1968 through May 1969 8 mo. at $43.81/mo. = 481.91

$1,245.79

Note: Omega Minor received General Assistance from Jan. 1967 through May 1967:

4 mo. at $34.54/mo. = -138.16

sub-total 1,107.63 1,107.63

Transportation (School Carfare):

Jan. 1967 through May 1969 28 mo. at $12.00/mo. = $336.00 336.00

Lunches:

Jan. 1967 through May 1969 28 mo. at $ 4.50/mo. = $126.00 126.00

Registration and School Fees:

Jan. 1967 through May 1969 6 semesters at $10/sem 60.00 60.00

School Books and Supplies:

Jan. 1967 through May 1969 6 semesters at $40/sem 240.00 240.00

Educational Allowance:

Jan. 1967 through May 1969 28 mo. at $12.00/mo. = 336.00 336.00

$2,205.63

[Proof of Service (Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DISTRICT

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son, JEROME ALEXANDER, GEORGIA TOWNSEND, individually and on behalf of her dependent daughter OMEGA MINOR, individually, and all on behalf of all OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS,

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid and DAVID L. DANIEL, Director, Cook County Department of Public Aid, DEFENDANTS

ANSWER OF DAVID L. DANIEL TO THE COMPLAINT OF GEORGIA TOWNSEND AND OMEGA MINOR, INTERVENORS—Filed July 30, 1969

Now comes the Defendant, DAVID L. DANIEL, Director of the Cook County Department of Public Aid, by his attorney, EDWARD V. HANRAHAN, State's Attorney of Cook County and answers the Intervenors' Complaint as follows:

The Defendant, DAVID L. DANIEL, adopts the Answer to the Intervenors Complaint of Harold O. Swank, Director of the Department of Public Aid of the State of Illinois, filed May 21, 1969.

EDWARD V. HANRAHAN
State's Attorney of Cook County
Attorney for Defendant, David L. Daniel, Director, Cook County Department of Public Aid.

/s/ DEAN H. BILTON
Assistant State's Attorney

[Affidavit of Service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son, JEROME ALEXANDER, GEORGIA TOWNSEND, individually and on behalf of her dependent daughter OMEGA MINOR, and OMEGA MINOR, individually, and all on behalf of all OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid and DAVID L. DANIEL, Director, Cook County Department of Public Aid, DEFENDANTS

ANSWER—Filed July 30, 1969

Now comes the defendant, DAVID L. DANIEL, Director, Cook County Department of Public Aid, by his attorney, EDWARD V. HANRAHAN, State's Attorney of Cook County, and answers the Plaintiff's Amended Complaint as follows:

1. The allegation in paragraph 1 of the Complaint that the Plaintiff has a cause of action based upon the enumerated statutes is denied.

2. He admits the allegations contained in paragraphs 2 (A) and 2 (B) of the Amended Complaint; however, he denies the allegations contained in paragraph 2 (C) of the Complaint.

3. He admits the allegations contained in paragraph 3 of the Complaint.

4. He admits the allegations contained in paragraph 4 of the Complaint.

5. The Defendant has no knowledge sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint.

6. He admits the allegations contained in paragraph 6 of the Complaint.

7. He denies the allegations contained in paragraph 7 of the Complaint.

The Defendant admits the allegation in paragraph 7 (B) of the Complaint, that the Plaintiff, Jerome Alexander, if enrolled in a trade or vocational school would be entitled to A.F.D.C. aid until age 21. The remaining allegations in paragraph 7 (B) of the Complaint are denied.

He denies the allegations contained in paragraph 7 (C) of the Complaint.

8. He denies the allegations contained in paragraph 8 (A) of the Complaint.

He admits the allegations contained in paragraph 8 (B) of the Complaint.

9. He denies the allegations contained in paragraph 9 of the Complaint.

10. He denies the allegations contained in paragraph 10 of the Complaint.

WHEREFORE, the Defendant, DAVID L. DANIEL, asks that the Court enter judgment for the Defendants.

EDWARD V. HANRAHAN
State's Attorney of Cook County,
Attorney for Defendant, David L.
Daniel, Director, Cook County
Department of Public Aid.

/s/ DEAN H. BILTON
Assistant State's Attorney

[Affidavit of Service (omitted in printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL., PLAINTIFFS
GEORGIA TOWNSEND, ET AL., INTERVENORS

*-vs-*

HAROLD O. SWANK, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID, ET AL., DEFENDANTS

ANSWER OF DEFENDANT HAROLD O. SWANK, DIRECTOR, DEPARTMENT OF PUBLIC AID OF THE STATE OF ILLINOIS, TO PLAINTIFFS LOVERTA ALEXANDER'S AND JEROME ALEXANDER'S MOTION FOR SUMMARY JUDGMENT AND DEFAULT JUDGMENT—Filed November 18, 1969

Comes now HAROLD O. SWANK, Director, Department of Public Aid of the State of Illinois, one of the defendants herein, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, his attorney, and answering the Motion For Summary Judgment and Default Judgment of plaintiffs LOVERTA ALEXANDER and JEROME ALEXANDER, two of the four plaintiffs herein, says:

I

Plaintiffs' Motion for Default Judgment is not directed against this defendant.

II

This defendant denies that there is no fact in dispute in his action or that there is no fact in dispute in this action which is material to a disposition of plaintiffs' motion for a summary judgment so as to allow plaintiffs' said motion.

III

Further answering plaintiffs' said motion, this defendant says that the depositions of the four plaintiffs recently taken by this defendant not only show that these plaintiffs are not entitled to a summary judgment, but show that judgment herein should be entered in favor of the defendants, and in support of the same attached hereto, as Exhibit A, a summary of the pertinent testimony under oath of plaintiff JEROME ALEXANDER, and, as Exhibit B, a summary of the pertinent testimony of plaintiff LOVERTA ALEXANDER.

IV

Also attached hereto is a copy of plaintiff JEROME ALEXANDER'S school record, and his ability as a basketball player, both obtained in discovery procedure by this defendant in this case.

V

For a further answer this defendant says that the appropriation relative to this case has lapsed.

WHEREFORE, this defendant moves this court to:

1. Deny plaintiffs' Motion for Summary Judgment;
2. Enter judgment in favor of this defendant and against plaintiffs JEROME and LOVERTA ALEXANDER.

WILLIAM J. SCOTT
Attorney General
State of Illinois
Attorney for defendant,
HAROLD O. SWANK

BERNARD GENIS
Assistant Attorney General
of Counsel

[Affidavit of Service (omitted in printing)]

## EXHIBIT "A"

DEPOSITION OF JEROME ALEXANDER, ONE OF THE PLAINTIFFS HEREIN, TAKEN FOR THE PURPOSE OF DISCOVERY BY DEFENDANT SWANK ON WEDNESDAY, AUGUST 6, 1969, THE ORIGINAL OF WHICH WAS SUBSEQUENTLY FILED IN THIS CAUSE.

The following is a summary of the more pertinent parts of Mr. Jerome Alexander's deposition:

The numbers in parenthesis refer to the page of the deposition where the testimony can be found.

Mr. Jerome Alexander testified that he was born on August 11, 1950, and consequently is now 19 years of age (p. 4). He was scheduled to graduate from Chicago Vocational High School in June 1968 but was short in his credits and consequently did not graduate until the end of the summer session of 1968 (p. 5). After graduating from high school he did odd jobs and played basketball (p. 5). On September 16, 1968; he started at Wilson Junior College (p. 6). Last year he played basketball and participated in three summer basketball tournaments (p. 7). The members of the team have to pay to play in these tournaments and hope to win individual trophies (p. 7). He played basketball in the third and fourth year in high school, and was first string center in his senior year. In the summer tournaments you play nearly every day (p. 8). In the summer of 1968, besides playing basketball he worked one week as a counselor at Camp Algonquin, a branch of the United Charities, for which he received free room and board and was paid $55.00 (p. 10). He has not applied for any scholarships but hopes to go to college on a basketball scholorship (p. 12). He is taking a General Liberal Arts Course at Junior College (p. 13). Wilson Jr. College which he is attending is a two-year course. You are supposed to take thirty hours of work a year so as to stay out of the draft. (p. 14). He has between seventeen and twenty-three hours credit. He does not know if it is seventeen or twenty-three. He took fifteen hours of courses in his first semester and twelve in his second semester. In his first semester, he

passed eleven hours and failed four hours. He does not remember how he did the second semester which ended in June. He did not have this information with him (p. 15). He thinks that in the semester that just ended in June that he passed nine hours and failed three (p. 16). You need sixty hours of credit to complete the course which is a two-year course and to get a two year degree. He plays basketball for Wilson Junior College and is a forward on the second team (p. 17). He practices basketball with the team from 3:00 p.m. to 6:00 p.m. daily from November to April (p. 18). Besides going to school and playing basketball he does odd jobs. He makes about five to seven dollars a week doing this (p. 19).

Some weeks he earns less and some weeks he earns a lot more. On Saturdays and Sundays he sometimes coaches grammer school basketball teams for which he is sometimes paid (p. 21). After finishing Wilson Junior College, he hopes to go to the University of Illinois on a scholarship, athletic or academic (p. 22). He receives $46.20 per month for old age assistance insurance (p. 23) through his father but does not know why. His mother gets $111.00 per month general assistance (p. 24). This year the school year ended June 6 (p. 25). He could not find a job so he has been playing basketball all summer (p. 27). He spends five to six hours every day playing basketball and occasionally on Saturday and Sunday (p. 27), also sometimes in the evening. He does not get paid for this and usually he has to pay to play (p. 28).

He does not believe that if he stopped playing basketball and spend more time studying that his grades would be any better. He stated " . . . ever since I started playing basketball it's been a part of my life, a main part of my life and like to play basketball, to have to eat it, live it, and drink it and that is what I do." (p. 29) He does not feel that his current credits will qualify him for the University of Wisconsin or any State University but hopes that they will get better. He believes that his basketball ability is good enough to qualify him for an athletic scholarship to the University of Illinois or any other University (p. 30).

He received a letter from the United Charities this summer asking him to come to work for a week like he had done before (p. 22, but he did not know if he would take it or whether he would play basketball. In 1967, he worked at Camp algonquin for two months and received $115.00 per month (p. 33). He did not apply for this job again this summer because he wanted to play basketball here (p. 34). He did not apply last summer for this job for the same reason, besides there are no girls there. He dates girls. They go to movies, dances, to the beach and museums (p. 35). He has a girlfriend and has had her for three years (p. 36).

He lives in a 2½ room apartment. His mother does most of the housework. He does a little (p. 37). They have a television set and a radio at home (p. 38). He used to baby-sit and sometimes he was paid (p. 40). He has boyfriends and he visits with them and they go places and do things (p. 42). His draft status is 2-S, student deferment (p. 43). He took the A.C.T. (American College Test) and the S.A.T. (Scholastic Aptitude Test) but, apparently, did not make it (p. 44). He will not quit school to go to work if the State of Illinois is able to find a job for him. He will not quit basketball to accept a part-time job if the State is able to find one for him (p. 46).

In his second semester he took twelve hours of work which is less than three hours per day (p. 48). He will not accept a part time job if it interferes with his basketball. He would like to go into the pros. He thinks he is fairly good enough (p. 54). He is six feet three or four inches tall and weighs 175 to 180 pounds.

## EXHIBIT "B"

DEPOSITION OF LOVERTA ALEXANDER, TAKEN FOR THE PURPOSE OF DISCOVERY BY DEFENDANT SWANK ON WEDNESDAY, AUGUST 6, 1969, THE ORIGINAL OF WHICH HAS BEEN FILED IN THIS CAUSE.

The following are the pertinent facts disclosed by the above deposition:

Mrs. Alexander testified that she lives with her son, Jerome (p. 2). That she also has a married daughter who has five children and who live a mile away. Her married daughter is separated from her husband and is on ADC (Aid To Dependent Children) (p. 3).

The mother gets $111.00 a month General Assistance and Jerome gets $46.60 a month because of his father's disability (p. 4). He gets this because he is under twenty-one and his father is disabled (p. 5). She does not know where Jerome's father is (p. 5). She is 58 years of age and was born on July 17, 1911 (p. 6). She pays $87.50 per month rent for 2½ rooms and it includes utilities (p. 7). She used to work as a nurses aide until they closed the nursing home on August 1963 (p. 9). She tried to get other nurses aide work but could not get it because they said she was over 40. She is able to take care of herself physically (p. 10). She is able to take care of her apartment, do the cooking and manage the shopping (p. 11). She will not take work as a baby-sitter. She approves of her son's basketball activities. She said "that is his heart. That is his mind." "That is what I want . . ." (p. 13).

She stays home all day, except when it is necessary to go to the clinic or the store (p. 14). Her son does not turn over to her the money he makes on his odd jobs. He does give to her the disability money that he gets (p. 16). Some of the General Assistance that she gets is for her son (p. 17).

Name ALEXANDER, Jerome Willie Lee Address 6531 South Kimbark

Place of Birth Chicago, Illinois Date of Birth 8/11/50 Sex Male

## HIGH SCHOOL CREDITS

Tr

From Dunbar Vocational High School (Summer School) X

Date of Graduation 8/16/68 Rank in Class 458/626

## COLLEGE RECORD

| Semester Hours | School | Standing | Tr |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

| Course | No. | Description | Semester Hrs. | Grade |
|---|---|---|---|---|
| ALEXANDER | JEROME W | FALL SEMESTER | | 1968 |
| BIOLO | 112 | GENERAL BIOLOGY | (4.0) | F |
| LIT | 120 | CONTEMPORARY BRIT-AMER LIT | 3.0 | C |
| MATH | 095 | PREPARATORY MATHEMATICS I | 3.0 | D* |
| GERMA | 101 | FIRST COURSE GERMAN | 4.0 | C |
| P E | 120 | GAME SURVEY | 0.5 | A |
| P E | 136 | ADVANCED SWIMMING | 0.5 | A |
| | | GRADE POINT AVERAGE 1.21 | | |
| ALEXANDER | JEROME W | SPRING SEMESTER | | 1969 |
| BUS | 117 | BEGINNING TYPEWRITING | 2.0 | D |
| ENGLISH | 101 | COMPOSITION | 3.0 | C |
| MATH | 101 | FUNDAMENTALS OF MATH I | (3.0) | F |
| GERMAN | 102 | SECOND COURSE GERMAN | (4.0) | F |
| PE M | 120 | GAME SURVEY | 0.5 | A |
| PE M | 120 | GAME SURVEY | 0.5 | A |
| | | CUM POINTS 25.0 TERM G P A | 0.67 | |
| | | CUM CR HRS 26.0 CUM G P A | 0.96 | |

| ACT Tests — Us. College Board Norms | Eng. | Math. | S. S. | N. Sc. | Comp. | Date |
|---|---|---|---|---|---|---|
| Standard | 15 | 01 | 09 | 14 | 10 | 12/67 |

SPECIAL NOTES

ACADEMIC PROBATION JAN 24 '69

ACADEMIC DISMISSAL JUL 7 1969

*No Credit Toward A. A. Degree

Note: This transcript is not valid for transfer to another institution without official

WILSON CAMPUS — 7047 Stewart Ave., Chicago, [redacted]

Zip Code 60637

ISSUED BY OFFICE OF THE REGISTRAR

Date of Entrance September 9, 1968

Social Security No. 346 - 44 - 3544

| Course | No. | Description | Semester Hrs. | Grade |
|---|---|---|---|---|

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**EXEMPTIONS**

Certified as having passed the special examination on the Constitutions of the United States and Illinois and the Code of the American Flag as per Chap. 122, Paragraph 27-3, Illinois Revised Statutes 1963.

Date

**Honors**

**STATUS**

Student is entitled to Honorable Dismissal and is in good standing unless otherwise noted.

Graduation A. A. Degree

Graduation Diploma

Z. Col

(DATE) (REGISTRAR)

[SEAL] WILSON CAMPUS
CHICAGO CITY COLLEGE

7047 South Stewart Avenue - Chicago, Illinois 60621
488-0900

Dean of Faculty
& Instruction

August 22, 1969

RE: Jerome William Lee Alexander
6531 South Kimbark 60637
Chicago, Illinois

Date of Birth: 8/11/50 Soc. Sec. # 346 44 3544
Dunbar Vocational High School graduate: 8/16/68

This student has played on the third string basketball team at this college this past season. In my opinion he is not Big Ten caliber and his chances of making it in the professional game is virtually nil.

If I may be of any further assistance to you on this matter please feel free to contact me at the College.

/s/ A. Lewis
A. LEWIS
Basketball Coach

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, et al., PLAINTIFFS,
GEORGIA TOWNSEND, et al., INTERVENORS,
*-vs-*
HAROLD O. SWANK, et al., DEFENDANTS

ANSWER OF DEFENDANT HAROLD O. SWANK, DIRECTOR, DEPARTMENT OF PUBLIC AID OF THE STATE OF ILLINOIS, TO PLAINTIFFS' OMEGA MINOR'S AND GEORGIA TOWNSEND'S MOTION FOR SUMMARY JUDGMENT AND DEFAULT JUDGMENT—Filed November 18, 1969

Comes now HAROLD O. SWANK, Director, Department of Public Aid of the State of Illinois, one of the defendants herein, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, his attorney, and answering the Motion For Summary Judgment and Default Judgment of plaintiffs OMEGA MINOR and GEORGIA TOWNSEND, two of the four plaintiffs herein, says:

I

Plaintiffs' Motion For Default Judgment is not directed against this defendant.

II

This defendant denies that there is no fact in dispute in this action or that there is no fact in dispute in this action which is material to a disposition of plaintiffs' motion for a summary judgment so as to allow plaintiffs' said motion.

III

Further answering plaintiffs' said motion, this defendant says that the depositions of the four plaintiffs re-

cently taken by this defendant not only show that these plaintiffs are not entitled to a summary judgment, but show that judgment herein should be entered in favor of the defendants, and in support of same attach hereto, as Exhibit C, a summary of the pertinent testimony under oath of plaintiff OMEGA MINOR, and as Exhibit D, a summary of the pertinent testimony of plaintiff GEORGIA TOWNSEND.

IV

Also attached hereto is a copy of plaintiff OMEGA MINOR'S school record, obtained in discovery procedure by this defendant, in this case.

V

For a further answer, this defendant says that the appropriation relative to this case has lapsed.

WHEREFORE, this defendant moves this court to:

1. Deny plaintiffs' Motion for Summary Judgment;
2. Enter judgment in favor of this defendant and against plaintiffs OMEGA MINOR and LOVERTA ALEXANDER.

---

WILLIAM J. SCOTT
Attorney General
State of Illinois
Attorney for Defendant,
Harold O. Swank

Bernard Genis
Assistant Attorney General
of Counsel

[Affidavit of Service (omitted in printing)]

## EXHIBIT "C"

DEPOSITION OF OMEGA MINOR, TAKEN FOR THE PURPOSE OF DISCOVERY BY DEFENDANT SWANK ON WEDNESDAY, SEPTEMBER 10, 1969, AND FILED IN THE ABOVE CAUSE ON FRIDAY, OCTOBER 3, 1969.

The following are the pertinent facts from the deposition of Omega Minor one of the plaintiffs herein:

She lives with her mother in a four-room apartment (p. 3). The rent is $70.00 per month. She graduated from grammar school in 1963 (p. 4). In August of 1966, she graduated from DuSable High School and there she took secretarial work, typing, shorthand and a business course (p. 5). She still knows how to type and was editor of the school paper (p. 6). She was Valedictorian of her class, and was in the upper five per cent of her class (p. 7).

After DuSable she went to South East Junior College (p. 11). She is taking teacher education courses, and has never discussed scholarships with anyone.

She and her mother were on ADC (Aid To Dependent Children). At age 18 her ADC stopped (p. 12). The Cook County Department of Public Aid suggested that she seek part time employment, but she did not (p. 13). The Director of students at DuSable High School suggested procedure for her for part time work but she did not pursue it (p. 14). She was not, and is not, interested in part time employment after school or on Saturdays or Sundays. She does not remember if she was put on probation after her first semester at South East Junior College (p. 15).

She was told why she was taken off of General Assistance. While attending South East Junior College, she did no work during her first summer vacation (p. 17), nor did she go to summer school. She spent her whole summer vacation studying and taking care of her mother. She studied what she had had in school and might have the next year (p. 18).

She cannot remember how many hours she claimed to study. She does not remember the grades she received her second year at Junior College (p. 19).

In the summer of 1968 she did no work, nor did she attend summer school. She started her third year at Junior College in September of 1968 (p. 20). Her mother, Georgia Townsend, also a plaintiff herein, suggested that she seek part time employment, but she decided against it (p. 23).

In the summer of 1969, she did not go to summer school, nor did she do any work. South East is a Junior City College, for the first two years of college work (p. 24). You are supposed to finish the course in two years. You need fifteen hours per semester, thirty hours per year, and sixty hours to finish. She has about forty hours in three years of attendance. She may finish in one more year, but is not sure (p. 25). She is not sure how many more hours she needs to finish. She does not know how many times she has been on probation. She does not know what her scholastic average is (p. 26). If and when she finishes South East Junior College she wants to go to Chicago State College, formerly Chicago Teacher's College. She will need a full four years more there also. She does not know if she will still need four more years there at Chicago State College or only two more years there (p. 20).

Some semesters at South East Junior College she has taken only nine hours of school work so she only went to schol three days a week and three hours during those three days a week (p. 29). Most of the time she has only taken nine hours of school work and only going to school three hours a day for three days a week (p. 29-30).

She has not been carrying a full load at school which is fifteen hours a semester (p. 30). She finally admitted that she has been on probation three semesters out of the six that she has been in school and stated that she has always known this (p. 31).

Some courses she has had to repeat. Some courses she has had to take twice and some three times (p. 32). She has never worked (p. 35). Her mother is able to dress herself, cook, and eat. Her mother goes for walks with her (p. 37). She contemplates taking a full course at

Chicago State (Teacher's) College which would be full time every day. But she does not know who will take care of her mother. She has never registered for employment and would not and will not accept any employment even part time.

At Christmas time she also stays home. She has never thought about getting typing work to do at home (p. 38). She has never done any baby-sitting (p. 39-40). Last semester for the first time she attempted to get a scholarship loan but did not have enough credits and her grades were not high enough (p. 39).

If she should become a school teacher, she does not know who will take care of her mother. She has a typewriter at home. She will be twenty-one years of age in December of this year, that is, 1969.

## EXHIBIT "D"

DEPOSITION OF GEORGIA TOWNSEND (MOTHER OF OMEGA MINOR) TAKEN FOR THE PURPOSE OF DISCOVERY BY DEFENDANT SWANK SEPTEMBER 10, 1969, AND FILED IN THIS CAUSE ON OCTOBER 3, 1969.

The following are the pertinent parts of the above deposition:

Mrs. Georgia Townsend, testified that she is forty years of age and lives with her daughter Omega Minor, both of whom are plaintiffs, with others, in the above entitled matter (p. 2).

She has been receiving aid from the State of Illinois since 1962, first it was ADC (Aid To Dependent Children) and later Disability Assistance (p. 3).

She is married but does not remember when. She is separated but does not know if she is divorced. She does not know where her husband is (p. 4). She thinks she lived with her husband about a year but does not really know. She does not know the nature of her illness, has been under doctors' care for ten years, has never worked, but did do a little sewing at one time (p. 5). Currently, she sees three different doctors at the Cook County Hospital (p. 6). The doctors at Cook County Hospital have treated her for ten years. She has been either on ADC or Disability during these ten years. The Cook County Department of Public Aid pays all her hospital and doctor expenses (p. 7). She goes to the hospital every month or two to see the doctors (p. 9-10). She goes and returns by cab and the Cook County Department of Public Aid pays her cab bills. All her medicines are paid by the Cook County Department of Public Aid. At home, sometimes she walks around (p. 10). Sometimes she sits up; sometimes she is in bed (p. 11). She can feed herself if she is not too ill. She can wash herself at times, and a couple of years ago the Cook County Department of Public Aid supplied her with nursing and housekeeping care (p. 11), and the Cook County Department of Public Aid paid for this (p. 12). This housekeeper was supposed to clean, cook and take care of her but "she messed up."

(p. 12). Mrs. Townsend was not satisfied with her. She has a wheelchair paid for by the Cook County Department of Public Aid. She came to this deposition in an automobile, walked into the building, into the elevator, and into this office, assisted by her daughter and an attorney.

At one time she was confined to her bed (p. 14) but no longer is. Nor is she confined to her wheelchair now (p. 15). She does not seem interested in having a housekeeper, or having her daughter work, although she says she permitted her daughter to work, "but due to the circumstances she can't" (p. 16). She "doesn't mind" if her daughter goes to work but hedged on whether she wants her daughter to work. She says it may take all day to clean a four-room apartment and cook (p. 17), but it would not take seven days a week to do this, nor does she remember how many days a week it does take. Her daughter does everything at home, does the shopping and studies (p. 18). She says her daughter, upon completing Junior College will go full time to Chicago State (Teacher's) College but does not know what she will do then.

Nursing and housekeeping help has been provided to her on three different occasions by the Cook County Department of Public Aid but she was not satisfied with any of them. Some of them were there five days a week. The only companionship she has is her daughter (p. 19). She has no friends and very few acquaintances. She gets along fine with her daughter and does not crave anyone else. She is lonesome when her daughter is not at home (p. 20). Her daughter also took care of her when she went to grammar school and high school and her daughter did well in her studies in grammar school and high school (p. 21).

The Cook County Department of Public Aid did suggest that her daughter seek part time employment. Her daughter has no friends either. Acquaintances do visit her daughter (p. 22). Sometimes her daughter takes her for a walk. Her daughter has no boyfriends. It has been a long time since any of her daughter's girl acquaintances have been around (p. 23).

Sometimes boys come around the house (p. 23-24). Her daughter did obtain a loan for some of her school books (p. 24-25). Even if the Cook County Department of Public Aid supplied her with full time nursing care and housekeeping care at her home, she does not know if her daughter would be able to go to work. When she goes to the hospital in a cab she goes alone (p. 25). Sometimes her daughter goes with her. Her grant from the Cook County Department of Public Aid is $120.68 per month.

# SOUTHEAST JUNIOR COLLEGE

Name MINOR, OMEGA LOIS Address 5111 Calumet

Place of Birth Chicago, Illinois Date of Birth 12-19-48 Sex Female

## HIGH SCHOOL CREDITS

From Dusab High School Chicago, Illinois

Rank in Class Date of Graduation August, 1966

## COLLEGE RECORD

| Semester Hours | School | Standing | Tr |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

| Course | No. | Description | Semester Hrs. | Grade |
|---|---|---|---|---|
| MINOR | | OMEGA L FALL SEMESTER | | 1966 |
| ENGLISH | 101 | COMPOSITION | 3.0 | D |
| SOC SCI | 101 | GENERAL SOCIAL SCIENCE | 3.0 | C |
| MUSIC | 101 | FUND OF MUSIC THEORY | 3.0 | D |
| MATH | 101 | FUNDAMENTALS OF MATH I | 3.0 | R |
| COUNSEL | 101 | EDUC AND VOC COUNSELING | 1.0 | C |
| | | GRADE POINT AVERAGE 1.33. | | |
| | | PUT ON SCHOLASTIC PROB'M. | | |
| OMEGA L MINOR | | SPRING SEMESTER | | 1967 |
| ENGLISH | 100 | COMPOSITION | 3.0 | B |
| MATH | 095 | PREPARATORY MATHEMATICS I | 3.0 | A |
| SOC SCI | 102 | GENERAL SOCIAL SCIENCE | 3.0 | D |
| | | GRADE POINT AVERAGE 2.66 | | |
| MINOR, OMEGA L | | FALL SEMESTER | | 67 |
| BIOLOGY | 101 | GENERAL BIOLOGY | 3.0 | F |
| ENGLISH | 101 | COMPOSITION | 3.0 | D |
| READING | 099 | READING SKILLS | 3.0 | B |
| | | GRADE POINT AVERAGE 1.33 | | |
| | | PUT ON SCHOLASTIC PROB'M. | | |
| OMEGA L MINOR | | SPRING SEMESTER | | 1968 |
| BIOLO | 101 | GENERAL BIOLOGY | 3.0 | C |
| ENGLI | 101 | COMPOSITION | 3.0 | B |
| SOC S | 102 | GENERAL SOCIAL SCIENCE | 3.0 | C |
| | | GRADE POINT AVERAGE 2.33 | | |

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*No Credit Toward A. A. Degree

Note: This transcript is not valid for transfer to another institution without official signature and imprint of college seal

8600 South Anthony Avenue • Chicago, Illinois 60617 • Phone RE 1-0281

ve. Chicago 15, Illinois. Date of Entrance Sept. 1966

| Course | No. | Description | Semester Hrs. | Grade |
|---|---|---|---|---|
| MINOR OMEGA L | | | FALL SEMESTER 1968 | |
| ENGLI | 150 | COLLEGE NEWSPAPER | 1.0 | B- |
| HUM | 205 | WORLD LITERATURE | 3.0 | C |
| TE MA | 101 | FUNDAMENTALS OF MATH I | 5.0 | D |
| POL S | 204 | INTERNATIONAL RELATIONS | 3.0 | D |
| | | GRADE POINT AVERAGE 1.42 | | |

PUT ON SCHOLASTIC PROB'N.

| | | | | |
|---|---|---|---|---|
| MINOR OMEGA L | | | SPRING SEMESTER 1969 | |
| ENGLISH | 102 | COMPOSITION | 3.0 | C |
| LIT | 110 | INTRODUCTION TO LITERATURE | 3.0 | B |
| FRENCH | 101 | FIRST COURSE FRENCH | 4.0 | A |
| CUM POINTS | | 48.0 TERM G P A | 3.10 | |
| CUM CR HRS | | 22.0 CUM G P A | 2.18 | |

| ACT | 1 ENGL. | 2 MATH. | 3 SOC. STUD. | 4 NAT. SCI. | 5 COMP. |
|---|---|---|---|---|---|
| | 15 | 05 | 17 | 14 | 13 |

STANDARD SCORES

EXEMPTIONS

Certified as having passed the special examination on the Constitutions of the United States and Illinois and the Code of the American Flag as per Chap. 122, Paragraph 27-3, Illinois Revised Statutes 1953.

Date

Honors

STATUS

Student is entitled to Honorable Dismissal and is in good standing unless otherwise noted.

Graduation A. A. Degree

Graduation Diploma

(DATE) (REGISTRAR)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individualy and on behalf of her minor son JEROME ALEXANDER, GEORGIA TOWNSEND, individually and on behalf of her dependent daughter OMEGA MINOR, and OMEGA MINOR, individually, and all on behalf of all OTHER PERSONS SIMILARLY SITUATED, PLAINTIFFS,

*v.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid and DAVID L. DANIEL, Director, Cook County Department of Public Aid, DEFENDANTS

MOTION OF DEFENDANT HAROLD O. SWANK FOR SUMMARY JUDGMENT AGAINST THE PLAINTIFFS—Filed November 18, 1969

Comes now HAROLD O. SWANK, Director, Department of Public Aid of the State of Illinois, one of the defendants herein, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, his attorney, and moves the Court to enter Summary Judgment in his favor and against the four plaintiffs herein, and each of them, and in support of same says:

I

The facts disclosed by the discovery depositions recently taken under oath of the four plaintiffs herein, and of the school records of plaintiffs JEROME ALEXANDER and OMEGA MINOR, two of the plaintiffs herein, show that said plaintiffs and each of them, are not entitled to any of the recovery sought in this suit.

II

In support of same, attached hereto is a summary of the pertinent parts of said depositions, same being Exhibit A, of JEROME ALEXANDER; Exhibit B, of LOVERTA ALEXANDER; Exhibit C, of OMEGA MINOR; and, Exhibit D, of GEORGIA TOWNSEND. Also attached hereto are the said school records of plaintiffs JEROME ALEXANDER and OMEGA MINOR.

III.

Furthermore, the appropriation relative to this case has lapsed.

WHEREFORE, this defendant prays that his summary motion against the four plaintiffs and each of them be granted.

WILLIAM J. SCOTT
Attorney General
State of Illinois
Attorney for
Harold O. Swank

Bernard Genis
Assistant Attorney General
Of Counsel

[Affidavit of Service (omitted in printing)]

CLERK'S NOTE

Exhibits "A" and "B" have been omitted here. They appear on pages 65-68 supra.

CLERK'S NOTE

Exhibits "C" and "D" have been omitted here. They appear on pages 74-79 supra.

CLERK'S NOTE

School record of Jerome Alexander is omitted here. It appears on page 69 supra.

CLERK'S NOTE

School record of Omega Minor is omitted here. It appears on page 80 supra.

CLERK'S NOTE

Letter re Jerome Alexander is omitted here. It appears on page 71 supra.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son, JEROME ALEXANDER; and all other persons similarly situated, PLAINTIFFS,

*and*

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, INTERVENING PLAINTIFFS,

*v.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid; and MAE WITHERS, Supervisor, Woodlawn District Office, Cook County Department of Public Aid, DEFENDANTS.

MEMORANDUM OPINION—April 30, 1970

Before SWYGERT, Chief Circuit Judge, PERRY and MAROVITZ, District Judges.

SWYGERT, Chief Judge. This is a class action challenging the validity of Art. IV, section 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. ch. 23, § 4-1.1 1967),[1] and Illinois Public Aid Regulation 150 issued

[1] Section 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat. ch. 23, § 4-1.1 (1967) provides:

Child Age Eligibility. The child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. "Regular attendance" as used in this Section, means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements instruction or which otherwise enhances his development toward a self-supporting status.

pursuant thereto.[2] Section 4-1.1 provides that needy children who are deprived of parental support and are between eighteen and twenty-one years of age and in regular attendance in high school, vocational school, or technical traning school are eligible to receive Aid to Families with Dependent Children (A.F.D.C.) benefits. Plaintiffs allege that section 4-1.1 is inconsistent with section 406(a)(2) of the Social Security Act, 42 U.S.C. 606(a)(2) and void under the Supremacy Clause.[3] They also assert that section 4-1.1 violates equal protection of the laws by failing to provide benefits to otherwise eligible children between the ages of eighteen and twenty-one who are attending college. We hold that section 4-1.1 is consistent with section 406(a)(2) of the Social Security Act and that it comports with the requirements of the fourteenth amendment. Accordingly, the relief requested by the plaintiffs must be denied.

This action was instituted on November 8, 1968 by plaintiff Loverta Alexander, individually and on behalf of her son, Jerome Alexander. Plaintiff's action was brought, pursuant to Rule 23(a), (b)(2) and (b)(3), Fed.R. Civ.P., on behalf of all persons similarly situated. The members of the plaintiff class include all children between the ages of eighteen and twenty-one and their parents or legal guardians who are denied A.F.D.C. benefits solely because said children are college or university students instead of high school, trade school, or vocational school students. The defendants, Harold O. Swank, David L.

---

[2] Illinois Public Aid Regulation 150 provides in part:

> Age Requirements—Dependant children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational training school. (This does not include 18 through 20 year old children in college.)

[3] Section 406 of the Social Security Act, 42 U.S.C. 606 provides in part:

> (a) The term "dependent child" means a needy child . . . (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a course of vocational or technical training designed to fit him for gainful employment.

Daniels, and Mae Withers, are officials responsible for the administration of A.F.D.C. benefits in Illinois. On March 11, 1969 Georgia Townsend intervened as plaintiff both individually and on behalf of her minor daughter, Omega Minor, and as a member of the class described in the original complaint filed by Loverta Alexander.

Plaintiffs' complaint states a cause of action under 42 U.S.C. § 1983 and is properly maintained as a class action in accordance with Rule 23, Fed.R.Civ.P. This court was correctly convened as a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 and jurisdiction to hear plaintiffs' action is proper under 28 U.S.C. §§ 1343(3), 2201.

Both plaintiffs and defendants have moved for summary judgment on the basis of material before us. All questions presented in this appeal involve issues of law and can be appropriately determined on the basis of the affidavits and pleadings. As a preliminary matter, defendants argue that the affidavits of plaintiffs demonstrate that Jerome Alexander and Omega Minor are not students in regular attendance in college and that they, therefore, lack standing to maintain this action on behalf of the plaintiff class. We disagree.

To possess standing to challenge the validity of a state statute the party seeking relief must allege " 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' *Baker* v. *Carr*, 369 U.S. 186, 204 (1962)." *Flast* v. *Cohen*, 392 U.S. 83, 99 (1968). Under this standard a needy child between the ages of eighteen and twenty-one who merely wishes to attend college might possess a personal stake sufficient to establish the requisite adverseness necessary for standing to challenge section 4-1.1. It should be undisputed, however, that standing exists if a person is actually denied benefits for any period solely because he regularly attends college rather than high school or vocational school. Thus, plaintiffs need not show that they are presently entitled to A.F.D.C. payments. We think the pleadings and the affidavits sufficiently demonstrate that Jerome Alexander and Omega Minor regu-

larly attended college in the past and were deprived of A.F.D.C. benefits as a result.

Section 4-1.1 provides that a high school or vocational school student must be in "regular attendance" in order to receive A.F.D.C. benefits. Regular attendance is defined as "attendance full time during the regular terms of such schools, or attendance part time . . . as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment. . . ." The key to the interpretation of regular attendance is the meaning of "attendance full time." That term is not defined by the statute or by regulation of the Illinois Department of Public Aid.

Jerome Alexander graduated from high school on August 15, 1968, four days after he reached his eighteenth birthday. On September 11, 1968 he enrolled in fourteen hours of classes for the fall semester at Wilson Junior College in Chicago. Without express regulations to the contrary, we think this constitutes full time attendance. On October 4, 1968 defendant Mae Withers, superintendent of the Woodlawn District Office of the Cook County Department of Public Aid, acting pursuant to section 4-1.1 and Illinois Department of Public Aid Regulation 150 withdrew A.F.D.C. benefits to Jerome Alexander and his mother, Loverta Alexander. Defendants admit that the sole ground for withdrawing benefits to plaintiffs was the fact that Jerome was over eighteen and not attending high school or vocational school. Thus defendants' action on October 4, 1968 injured plaintiffs and provided them with standing to challenge the validity of section 4-1.1.

Omega Minor graduated from high school in August 1966. In September 1966 she enrolled at Southeast Junior College in courses providing thirteen hours credit. We believe that this is sufficient to constitute attendance full time within the meaning of section 4-1.1. On December 19, 1966 Omega Minor celebrated her eighteenth birthday. On January 1967, before the end of the fall term, A.F.D.C. benefits previously paid to Georgia Townsend for support of Omega were withdrawn. Again the sole reason for the cessation of benefits was plaintiff's

failure to qualify for benefits under section 4-1.1. After aid was withdrawn Omega Minor continued to attend Southeast Junior College. We think the cessation of aid in January is sufficient to give plaintiff Townsend standing to challenge section 4-1.1.

Defendants cite numerous passages from plaintiffs' affidavits to demonstrate that plaintiffs are unsatisfactory students and that they were unwilling to perform part time work. In the absence of express regulations defining full time attendance under section 4-1.1, we think these considerations are irrelevant. With standing established we now turn to plaintiffs' substantive attacks on section 4-1.1.

## I. Is Section 4-1.1 Consistent With the Social Security Act?

In 1935 Congress enacted Title IV of the Social Security Act, 42 U.S.C. 601 to 644, as a federal grant-in-aid program designed to provide funds to states which establish Aid to Dependent Children Programs.[4] Section 406(a) of that title defines the class of dependent children for whom federal matching funds are available. A dependent child according to 406(a)(2) includes a child who is under eighteen or between eighteen and twenty-one years of age and a student regularly attending secondary school, college, or a course of vocational or technical training. Plaintiffs argue that states must adopt this definition in determining which persons are eligible for benefits under their own A.F.D.C. programs. We disagree.

The primary purposes of Title IV of the Social Security Act were expressed by Congress in section 401, 42 U.S.C. § 601 as follows:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish finan-

[4] The program was originally known as "Aid to Dependent Children." In the 1962 amendments the name was changed to "Aid and Service to Needy Families With Children."

> cial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

As is readily evident from this section, Congress was primarily interested in encouraging state participation in A.F.D.C. programs and not in establishing a uniform national welfare system. Variations among state programs were clearly envisioned as is evidenced by recognition that the purposes of the Act would be carried out "as far as practical under the conditions in such state." Congress insured that federal provisions and policies would be followed by providing for review of state programs by the Secretary of Health, Education and Welfare. Section 404(a), section 4-1.1 of the Illinois Public Aid Code on August 31, 1967. We are, nevertheless, not foreclosed from conducting our own examination to determine whether the Secretary of H.E.W. was correct in determining that section 4-1.1 is consistent with federal standards. *Dandridge* v. *Williams*, 38 U.S.L.W. 4277, 4280 (April 6, 1970). *Rosado* v. *Wyman*, 38 U.S.L.W. 4266, 4268 (April 6, 1970).

Plaintiffs maintain that section 406(a)(2) allows states a limited choice in defining "dependent children" but compels them to provide A.F.D.C. benefits either to all eligible children between eighteen and twenty-one who are students or to deny aid to all persons over eighteen. We disagree. In contrast to other sections in which Congress has mandated uniform standards or a choice of

standards in state programs; section 402(a), 42 U.S.C. § 602(a), *Dandridge* v. *Williams, supra; Rosado* v. *Wyman, supra*, the words of section 406(a)(2) do not expressly and unequivocally require states to incorporate the federal definition of dependent children in their own programs.

Furthermore, the legislative history of section 406(a)(2), which was enacted as an amendment to the Social Security Act in 1965, indicates that Congress granted states considerable flexibility in extending A.F.D.C. benefits to children over eighteen years of age. We are convinced that the range of choices granted under that section is significantly greater than plaintiffs suggest. Prior to the 1965 amendment, "dependent children" in the Social Security Act was defined in a manner nearly identical to section 4-1.1 of the Illinois Public Aid Code.[5] The Senate Committee on Finance explainted the purpose of the 1965 amendment as follows:

> Under existing law States, at their *option*, *may* continue payments to needy children *up* to age 21 in the aid to families with dependent children program, providing they are "regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent or regularly attending a course of vocational or technical training designed to fit him for gainful employment." The committee added an amendment extending this provision so as to *include* needy children under 21 who are regularly "attending a school, college, or university." Federal sharing for this purpose [would thus be available to States who implement such a program for payments to children regularly attend-

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[5] Prior to the 1965 amendment, section 406(a) of the Social Security Act defined a dependent child to include:

> a needy child (2) who is (A) under the age of eighteen of (B) under the age of twenty-one and . . . a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

> ing a college, or university, as well as those attending high school or a vocational school, thus bringing this provision more nearly in line with the provision of the bill relating to the continuation of a child's benefit under the OASDI system. 1965 *Cong. & Admin. News* 2087.

The Committee report does not state or even imply that programs including provisions adopted pursuant to the 1964 amendment were invalidated by the 1965 amendment to section 402(a)(2); instead, the report strongly suggests that the purpose of the 1965 amendment was merely to extend the availability of federal matching funds for states who wished to enact provisions providing for aid to dependent children and needy college students between ages eighteen and twenty-one. Plaintiffs rely heavily upon the H.E.W. *Handbook of Public Assistance*, Pt. IV §§ G-3210, G-3220 (1967), to demonstrate a contrary intent. Although the Handbook offers several additional explanations for Congress' action, we find nothing contrary to the intent expressed in the Committee report to make the adoption of the definition contained in section 406(a) discretionary with the states. In summary, therefore, we hold that section 4-1.1 is not at variance with section 406(a)(2) of the Social Security Act.

Our holding is consistent with the Supreme Court's decision in *King* v. *Smith*, 392 U.S. 309 (1968). That case involved Alabama's so-called substitute father regulation which denied A.F.D.C. benefits to children of a mother who "cohabits" in or outside her home with any single or married able-bodied man. The regulation had not been approved by H.E.W. The Court held that the Alabama regulation, by punishing children because of immoral acts of their mothers, operated in a fashion in direct conflict with the paramount objective of Title IV, protecting dependent and needy children. *Accord, Doe* v. *Shapiro*, 2 CCH POV. LAW REP. ¶ 10, 171 (D.C. Conn. August 5, 1969). We agree with plaintiffs that permitting dependent children to complete their education is at least in part a purpose of the Social Security

Act. We are of the opinion, however, that this purpose is not so central and overriding as to require us to hold that section 4-1.1 of the Illinois Public Aid Code is void under the Supremacy Clause.[6]

## II. Does section 4-1.1 Violate the Equal Protection Clause?

Section 4-1.1 and Public Aid Regulation 150 create two classes of poor families with dependent children different only in that in one the dependent child attends college and in the other attends high school, vocational school, or technical training school. The latter class is entitled to A.F.D.C. benefits while the former is not. We must, therefore, determine whether classification on the basis of the type school which a dependent child attends is irrational, arbitrary, and in violation of the Equal Protection Clause of the fourteenth amendment.

The standard by which courts should determine the constitutionality of state welfare provisions under the fourteenth amendment has been a subject of considerable dispute since the Supreme Court's decision in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969); *see Rothstein* v. *Wyman*, 303 F.Supp. 339 (S.D.N.Y. 1969); *Napper* v. *Wyman*, 305 F.Supp. 429 (S.D.N.Y. 1969). In *Shapiro* the Court intimated, without deciding, that the states must demonstrate a "compelling state interest" to sustain state welfare statutes since legislative classifications may deny recipients "food, shelter, and other necessities of life," *Shapiro, supra*, at 627. We believe that the appropriate standard has been conclusively determined, however, in the recent case of *Dandridge* v. *Williams*, 38 U.S.L.W. 4277 (April 6, 1970).

In that case the Court was asked to determine whether a Maryland statute imposing an upper limit on the total amount of welfare benefits which any one family may

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[6] Our holding is also consistent with *Rosado* v. *Wyman, supra*. In that case the New York legislature altered its benefits in a manner directly in conflict with the Congressional purposes in enacting section 402(a)(23), 42 U.S.C. § 602(a)(23), a provision expressly requiring uniformity of standards in state programs.

receive violated the fourteenth amendment. In upholding the provision the Court commented as follows:

> [H]ere we deal with state regulation in the social and economic field, not affecting freedoms guaranteed by the Bill of Rights, and claimed to violate the Fourteenth Amendment only because the regulation results in some disparity in grants of welfare payments to the largest AFDC families. For this Court to approve the invalidation of state economic or social regulation as "overreaching" would be far too reminiscent of an era when the Court thought the Fourteenth Amendment gave it power to strike down state laws "because they may be unwise, improvident, or out of harmony with a particular school of thought." *Williamson* v. *Lee Optical Co.*, 348 U.S. 483, 488. That era long ago passed into history. *Ferguson* v. *Skrupa*, 372 U.S. 726.
>
> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality." *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78. "The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific." *Metropolis Theatre Co.* v. *City of Chicago*, 228 U.S. 61, 69-70. "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *Maryland*, 366 U.S. 420, 426.
>
> To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. The administration of public welfare assistance, by contrast, involves the most basic economic needs of impoverished

> human beings. We recognize the dramatically real factual difference between the cited cases and this one, but we can find no basis for applying a different constitutional standard. See *Snell* v. *Wyman*, 281 F.Supp. 853, aff'd, —— U.S. ——. It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. *Goesaert* v. *Clearly*, 335 U.S. 464; *Kotch* v. *Board of River Port Pilot Comm'rs*, 330 U.S. 552. See also *Flemming* v. *Nestor*, 363 U.S. 603. And it is a standard that is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of wise economic or social policy. *Dandridge* v. *Williams*, 38 38 U.S.L.W. 4277, 4281. (footnotes omitted).

When this standard is applied we find that section 4-1.1 is constitutional.

Defendants maintain that section 4-1 is designed primarily to permit dependent children to obtain sufficient education to become employable. They argue that special benefits to needy children in high school or vocational school are justified since "persons over 18 who are still in high school are educationally slow, and persons in vocational schools, generally speaking, are not on an intellectual par with other students are less able to presently support themselves." The overall purpose of the enactment is to conserve state funds and to promote governmental economy.

The limited nature of our review compels us to uphold section 4-1.1. It is undisputed that the twin goals of aiding needy children to become employable and of insuring fiscal integrity of state welfare programs are legitimate state interests. And, although we are inclined to question the wisdom of extending aid only to high school or vocational school students, we agree that there is a rational connection between these legislative objectives and the classifications contained in section 4-1.1.

Accordingly, the relief requested by plaintiffs must be denied.

ENTER:

/s/ Luther M. Swygert
United States Circuit Judge

/s/ J. S. Perry
United States District Judge

/s/ Abraham L. Marovitz
United States District Judge

Dated: April 30, 1970

MAROVITZ, J. (concurring):

I concur in all respects to Chief Judge Swygert's opinion as it refers to the procedural issues of jurisdiction and standing and the substantive issue of the compatability of the challenged state statute with the federal supremacy clause. I also concur with his holding on the equal protection issue, but feel that a further exploration of that aspect of the case might be appropriate.

The Fourteenth Amendment prohibits any state from denying "the equal protection of the laws" to "any person within its jurisdiction . . . ." The original understanding of the scope and extent of the equal protection guarantee was never very clear. *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1068-69 (1969). Over a century of experience with the principle has not resulted in either a definitive characterization of what the Constitution seeks to protect equally or even a firm standard to assist the judiciary in dealing with the many and varied problems which are presented to it. The instant case, for example, is made all the more difficult because one side wants the facts weighed under a "compelling state interest" test, while the other side has urged the "reasonable classification" guideline.

Under our Constitution, the states are not prohibited from distinguishing between or classifying citizens for

different treatment, but, traditionally, "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415 (1920); *accord, Dandridge* v. *Williams*, 38 U.S.L.W. 4277, 4281 (April 6, 1970); *Avery* v. *Midland*, 390 U.S. 474, 484 (1968). There is no dispute about the fact that the Illinois statute, Ill. Rev. Stat. Ch. 23, § 4-1.1, makes a clear distinction between one person, age eighteen through twenty attending a vocational or technical training school and another person in the same age bracket and financial condition with the same family background, but who attends a college or university. The question is whether or not the different treatment afforded these two persons is grounded on a reasonable or rational basis and, therefore, constitutional or is so arbitrary and invidious as to be unconstitutional.

Essentially, the Illinois law is designed to provide financial support to economically deprived youth in order to permit them to become employable and self-sufficient. I have no difficulty at all with the statute so far as it permits a person otherwise qualified and over 18 to receive financial support until that person completes his or her secondary school education. The importance of a high school diploma to a job seeker cannot be overestimated and the equal protection clause is not violated when a state supports some persons past the demarcation line (the eighteenth birthday) if that person needs extra time in order to complete the high school program. See *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1166-69 (1969). Nor am I much troubled by vocational training which is in lieu of high school education.

In my view, however, a serious difficulty arises when the statutory discrimination operates at the post-high school level. The state has asserted that persons enrolled in vocational training programs are intellectually inferior to those in college, but there is no documentation before us to indicate that such is uniformally or even

generally true. Conversely it may, arguably, be said that there are some persons in college who lack the physical aptitude, coordination, and mechanical ability of vocational students. For instance, a person may be suited by talent and temperament to be an excellent poet or attorney, but not an automobile mechanic or television repairman. In this sense, he could only become economically self-sufficient with a college education, just, as the state contends, another person can only become employable through advanced vocational training.

If all factors in the national or local employment situation were equal, that is, if incentives to learn white and blue collar trades and the supply and demand for professional and labor positions were the same, the reasonable basis for the statuatory distinction would not be apparent. However, the skills of manual laborers are in short supply. See "Why manual jobs go begging", Chicago Daily News, April 13, 1970, at 41, cols. 4-8. Evaluated as a means of utilizing limited state funds in an effort to channel persons into those employment positions for which the society has great need, the statutory discrimination between college students and post-high school vocational trainees is not purely arbitrary or invidious, but rather, a rational approach designed to correct a perceived problem. Certainly, the statutory scheme is grounded in a more realistic basis than other situations where the judiciary has invoked its imaginative powers to justify state action. See, e.g., *Kotch* v. *Board of River Port Comm'rs*, 330 U.S. 552 (1947).

In benefiting post-high school but not college students who are otherwise qualified, the Illinois approach is one of "under-inclusion." See *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1084-86 (1969). The *Dandridge case*, 38 U.S.L.W. at 4282, is the most recent in a long line of Supreme Court decisions which, essentially, have held that under-inclusion which results from a state's attempt to do what it can within its means does not result in a denial of equal protection. See also, *Williamson* v. *Lee Optical, Inc.*, 348 U.S. 483, 489 (1955); *Buck* v. *Bell*, 274 U.S. 200, 208 (1927); *Linsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79 (1911).

Plaintiffs have also suggested that the Illinois law, besides generally discriminating against brains in favor of brawn, would also discriminate between persons who pursue the same profession, but in different ways. For example, a girl enrolled in a nurses' training course would be eligible for welfare support, but one attending college and majoring in nursing would not so qualify. Under *Dandridge*, 38 U.S.L.W. at 4281, however, we cannot say that this theoretical imperfection amounts to a denial of equal protection or makes the Illinois statute unconstitutional.

As to the wisdom of the Illinois law, we make no comment. It is incumbent upon the judiciary to avoid the pitfalls similar to those in a substantive due process analysis. See L. Hand, The Bill of Rights 70-72 (Atheneum ed. 1964). We can only repeat what Mr. Justice Cardozo said in another context:

> "Whether wisdom or unwisdom resides in the scheme of benefits set forth . . . is not for us to say. The answer to such inquiries must come from (the legislature), not the courts. Our concern here, as often, is with power, not with wisdom."
> *Helvering* v. *Davis*, 301 U.S. 619, 644 (1937).

Having decided that Illinois has not violated the supremacy clause or denied plaintiffs the equal protection of the laws, our opinion ends.

ENTER:

/s/ Abraham L. Marovitz
United States District Judge

Dated: April 30, 1970

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENING PLAINTIFFS

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL., DEFENDANTS

MOTION FOR RECONSIDERATION—Filed May 11, 1970

Plaintiffs LOVERTA ALEXANDER and JEROME ALEXANDER, by their counsel, respectfully move, pursuant to Rules 52(b) and 59(a) and (e), Federal Rules of Civil Procedure, to vacate the judgment entered herein on April 30, 1970, and for reconsideration of the above cause, and in support thereof state as follows:

1. The above entitled cause was orally argued before the three judge court on November 21, 1969, and was taken under advisement.

2. On April 6, 1970, the United States Supreme Court said in *Rosado* v. *Wyman*, 38 L.W. 4268, —— U.S. ——:

> Whenever possible the district courts should obtain the views of HEW in those cases where it has not set forth its views, either in a regulation, published opinion, or in cases where there is real doubt as to how the Department's standards apply to the particular state regulation or program.

3. On April 30, 1970, the three judge Court herein rendered its decision holding, inter alia, that a provision of the Illinois Public Aid Code, Ch. 23 § 4-1.1, Ill. Rev. Stat., and Illinois Public Aid Regulation 150 issued pursuant thereto were not inconsistent with the Federal Social Security Act. In that connection, this Court noted that the "Secretary of H.E.W. approved Section 4-1.1 of the Illinois Public Aid Code on August 31." The current views of H.E.W. were never invited by this Court.

4. On April 27, 1970, Joel Cohen, Deputy General Counsel of the Department of Health, Education and Welfare informed James Spitzer, who is of counsel in this cause, that H.E.W. would submit its views in this matter if requested to do so by the Court.

5. It is possible that at this time the Secretary of H.E.W., in light of his own regulations, might well indicate that Section 4-1.1 of the Illinois Public Aid Code and Regulation 150 are inconsistent with federal law.

6. The interests of justice and of all the parties herein would seem to be best served by withholding entry of final judgment herein pending an opportunity for H.E.W. to express its views on the question whether Section 4-1.1 of the Illinois Public Aid Code and Illinois Regulation 150 are consistent with 42 U.S.C. 606(a)(2) and H.E.W. Regulations.

WHEREFORE, plaintiffs pray that the judgment entered on April 30, 1970 be vacated, and that the cause be reconsidered with an invitation to H.E.W. to express its views on the issues presented herein.

Respectfully submitted,

/s/ Melvin B. Goldberg
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[Notice of Motion for Reconsideration (Omitted in Printing)]

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENING PLAINTIFFS

*vs.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL., DEFENDANTS

INTERVENORS' MOTION FOR RECONSIDERATION—
Filed May 11, 1970

Intervening Plaintiffs GEORGIA TOWNSEND and AMEGA MINOR, by their counsel, respectfully move, pursuant to Rules 52(b) and 59(a) and (e), Federal Rules of Civil Procedure, to vacate the judgment entered herein on April 30, 1970, and for reconsideration of the above cause, and in support thereof state as follows:

1. The above entitled cause was orally argued before the three judge court on November 21, 1969, and was taken under advisement.

2. On April 30, 1970, the three judge Court herein rendered its decision holding, inter alia, that a provision of the Illinois Public Aid Code, Ch. 23 § 4-1.1, Ill.Rev. Stat., and Illinois Public Aid Regulation 150 issued pursuant thereto were not inconsistent with the Federal Social Security Act. In that connection, this Court noted that:

> "In contrast to other sections in which Congress has mandated uniform standards or a choice of standards in state programs; Section 402(a), 42 U.S.C. § 602(a), *Dandridge* v. *Williams*, supra; *Rosado* v. *Wyman*, supra, the words of section 406(a)(2) do not expressly and unequivocally require states to in-

corporate the federal definition of dependent children in their own programs."

3. The Court should consider that the definition of "dependent children" given by 42 U.S.C. § 606(a) says, "When used in this part—" which means Part A of Subchapter IV of the Social Security Act. The definition of "dependent child" is used throughout Part A including § 602(a), a section in which Congress has mandated uniform standards. (King v. Smith, 392 U.S. 309 (1968).) Thus Section 402(a)(8)(A)(i) mandates that:

> (a) A State plan for aid and services to needy families with children must (8) provide that . . . the State agency—(A) shall with respect to any month disregard—(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college or university, or a course of vocational or technical training designed to fit him for gainful employment.

This is a mandated uniform standard for disregarding earned income of dependent children including college and university students.

4. The Court should consider that 42 U.S.C. § 602(a)(10) requires the furnishing of aid to families with *dependent children* with reasonable promptness to all eligible individuals. The mandatory provision that all eligible individuals receive and requires some legal standard of eligibility. That legal standard imposed on the states is "dependent child", the definition of which is set forth in 42 U.S.C. § 606(a). This is the standard which the States must follow. If the definition of dependent children is not incorporated into the mandatory requirements of 42 U.S.C. § 602(a), then a state may set any age limit it desires. It might, for example, define dependent child as being under twelve years of age, or sixteen years of age. This would clearly defeat the intent of Congress.

5. The interests of justice and of all the parties herein would seem to be best served by withholding entry of final judgment herein pending an opportunity to more fully reconsider whether § 4-1.1 of the Illinois Public Aid Code and Illinois Regulation 150 are consistent with 42 U.S.C. 606 (a) (2) and 602(a) and H.E.W. Regulations.

WHEREFORE, plaintiffs pray that the judgment entered on April 30, 1970 be vacated, and that the cause be reconsidered.

Respectfully submitted,

/s/ Michael F. Lefkow
Attorney for Plaintiffs-Intervenors
Community Legal Counsel
116 South Michigan Avenue
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726-0157

[Notice of Motion for Reconsideration (Omitted in Printing)]

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable A. L. MARCOVITZ

Cause No. 68 C 2134 Date June 12, 1970

Title of Cause Alexander et al
vs Swank et al

Brief Statement of Motion Hearing of plaintiffs' motions for vacating judgment and

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

for reconsideration

Names and Addresses of moving counsel

Representing

Names and Addresses of other counsel entitled to notice and names of parties they represent.

It is Ordered that plaintiffs' motions for vacating judgment and for reconsideration are hereby denied as to all issues.

Reserve space below for notations by minute clerk

Surgent e.o.
Penny e.o.
Marovitz e.o.

JUN 12 1970

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, individually and on behalf of her minor son, JEROME ALEXANDER, and all other persons similarly situated, PLAINTIFFS-APPELLANTS

and

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, INTERVENING PLAINTIFFS

*v.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIELS, Director, Cook County Department of Public Aid; and MAE WITHERS, Supervisor, Woodlawn District Office, Cook County Department of Public Aid, DEFENDANTS-APPELLEES

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 14, 1970

Notice is hereby given that LOVERTA ALEXANDER and JEROME ALEXANDER, plaintiffs in the above named case, hereby appeal to the Supreme Court of the United States from the final judgment of this court entered in the above captioned proceeding, pursuant to Title 28 U.S.C. section 1253, and further:

1) That said appeal is being taken from the final order of this three judge court denying plaintiffs' motion for summary judgment, granting defendants' motion for summary judgment and thereby dismissing plaintiffs' Complaint for declaratory judgment and injunctive relief.

2) Said orders were entered on April 30, 1970 by Chief Circuit Judge Swygert and District Judges Perry and Marovitz.

3) Plaintiffs' motions for vacating judgment and reconsideration of the cause were denied on June 12, 1970.

Respectfully submitted,

/s/ Melvin B. Goldberg
Attorney for Plaintiffs
Alexander

Cook County Legal Assistance
Foundation, Inc.
19 South La Salle Street
Chicago, Illinois 60603
ANdover 3-2267

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

[File Endorsement Omitted]

LOVERTA ALEXANDER, ET AL., PLAINTIFFS,
GEORGIA TOWNSEND, ET AL., INTERVENING PLAINTIFFS

*vs.*

HAROLD O. SWANK, Director of the Illinois Department of Public Aid, ET AL., DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed July 14, 1970

Notice is hereby given that GEORGIA TOWNSEND and OMEGA MINOR, the intervening plaintiffs in the above entitled cause, hereby appeal to the Supreme Court of the United States from the final order of April 30, 1970, denying intervening plaintiffs' motion for summary judgment, granting defendants' motions for summary judgment, and dismissing intervening plaintiffs' complaint for declaratory judgment, injunctive relief and damages, and the order of June 12, 1970, denying as to all issues intervening plaintiffs' motion to vacate the judgment of April 30, 1970, and to reconsider the cause.

This appeal is taken pursuant to 28 U.S.C. § 1253.

/s/ Michael F. Lefkow
Attorney for Intervening Plaintiffs

MICHAEL F. LEFKOW
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116 South Michigan Avenue
Chicago, Illinois 60603
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[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

LOVERTA ALEXANDER, ET AL., PLAINTIFFS

*vs.*

HAROLD O. SWANK, ET AL., DEFENDANTS

The deposition of JEROME ALEXANDER, called by the Defendants for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before a Notary Public within and for the County of Cook and State of Illinois, on the 6th day of August, A.D. 1969, at the hour of 10:00 o'clock, A.M., at 160 North La Salle Street, 9th Floor, Chicago, Illinois, pursuant to Notice and Agreement.

PRESENT: MR. MELVIN B. GOLDBERG appeared on behalf of the Plaintiffs;

[fol. 2] HON. WILLIAM J. SCOTT, Attorney General, by MR. BERNARD GENIS, Assistant Attorney General appeared on behalf of the Defendant, Harold O. Swank;

HON. EDWARD V. HANRAHAN, State's Attorney, by MR. DEAN H. BILTON, Assistant State's Attorney, appeared on behalf of the Defendants, David Daniel and Mae Withers.

MR. GENIS: These depositions of Loverta Alexander—what is your name?

THE WITNESS: Jerome Alexander.

MR. GENIS: Georgia Townsend and Omega Minor, the four plaintiffs herein, are being taken pursuant to a Notice that our office served on July 18, 1969. The origi-

nal Notice was for the taking of these depositions on Wednesday, July 30, 1969 in the office of the Attorney General, Room 900, State of Illinois, 160 North La Salle Street, Chicago, Illinois.

Subsequent thereto we were served with a Notice by the attorneys for the plaintiffs that they were appearing before His Honor Judge Marovitz to move that our Notice to take these depositions be quashed.

The plaintiffs did appear in the Federal Court for that purpose. Judge Marovitz was on vacation so they appeared [fol. 3] before His Honor Judge Perry and Judge Perry denied the plaintiffs' motions. They appeared before Judge Perry on Wednesday, July 30, 1969, which was the date that these depositions were originally scheduled for.

After Judge Perry denied said motions, the attorneys for the plaintiffs and the attorneys for the defendants agreed to take these depositions this past Monday which, I believe, was August 4th but subsequently we receievd telephone call from Mr. Goldberg that Mr. Lefkow, who represents Georgia Townsend and Omega Minor, would not be able to be there.

MR. GOLDBERG: The problem was that Omega Minor and Georgia Townsend were unable to come down.

MR. GENIS: Yes, Georgia Townsend and Omega Minor were unable to be here on Monday, August 4th, so, therefore, they suggested a date of Wednesday, August 6th which is today and, therefore, that is why we are here today.

Miss Court Reporter, would you please swear Mrs. Alexander and Jerome Alexander.

(Witnesses sworn.)

Now, sir, will you kindly speak up so everybody in this room can hear you.

[fol. 4] THE WITNESS: Okay.

JEROME ALEXANDER,

having been first duly sworn, deposeth and saith as follows:

EXAMINATION BY MR. GENIS

Q Will you please state your name?
A Jerome Alexander.
Q Where do you live, sir?
A 6531 South Kimbark Avenue
Q That is in Chicago, Illinois?
A Chicago, Illinois.
Q And you are one of the plaintiffs in this case, is that right, sir?
A Yes, sir.
Q Jerome, when were you born?
A August 11, 1950.
Q So you are now eighteen years of age?
A Yes, sir.
Q And in a few days from now you will be nineteen?
A Yes, sir.
Q Did you graduate from high school?
A Yes, sir, I did.
[fol. 5] Q What high school did you graduate from?
A Chicago Vocational High School, sir.
Q When?
A Well, sir, I was scheduled to graduate with my class in June but I went to summer school and graduated in August and still received by diploma from the Chicago Vocational High School.
Q Could you speak a lttle louder. I heard what you just said, but hereafter.
You graduated in August of what year?
A Of 1968.
MR. GOLDBERG: Can we let the record reflect the presence of the Assistant State's Attorney, Dean Bilton.
MR. BILTON: B-i-l-t-o-n.
MR. GENIS: Who represents—
MR. BILTON: David Daniel and Mae Withers.

BY MR. GENIS:

Q Jerome, after you graduated in 1968 what did you do then?
A Well, after summer school was over I looked for a job, tried to get a job and I didn't have any apparent

luck so I just played ball and did odd jobs, the same I am doing now.

[fol. 7] Q You stated that you also played ball?

A Yes, sir.

Q What kind of ball?

A Basketball. Participated in about three summer tournaments last year.

Q I don't hear.

A I participated in about three summer tournaments last year.

Q Three summer tournaments?

A Yes.

Q And who did you play with? What team?

A Well, it wasn't any school team, sir. It was just a group of boys that get together and decide they want a team.

You pay—you find out where a tournament is. You pay the certain amount of money, maybe a dollar a man or dollar and a half a man and hope to take first, second or third place where you get—where you might win an individual trophy.

At Dunbar it was sponsored by the Chicago Park District. And the Hyde Park Club sponsored one and the Woodlawn Boys Club.

Q And does each team have to pay an entrance fee?

A Yes, sir, they do. That is the general principals [fol. 8] for trophies.

Q And how much is the entrance fee?

A Well, it varies. Down at Dunbar it was a dollar and—

Q Dollar per team or per man?

A Per man. The team usually consisted of ten to fifteen men. Most cases, ten.

At the Woodlawn Boys Club it was a dollar and a half and Hyde Park Neighborhood Club, it was a dollar and a half.

Q Had you played basketball in high school?

A Yes, sir, I did. I went out my junior year and I sat on the bench the full season. And in my senior year I started.

Q And did you make the team?

A Yes, sir, I mean second season I was first string center.

Q And for how long in the summer of '68 did you play basketball?

A Well, summer school finished about August 15th so roughly it was about a month left before school started at Wilson so about two and a half of those weeks I was out applying for a job and the other two weeks I was playing in the tournament where you play nearly every day or [fol. 9] every other day.

Q What sourt of course did you take in high school?

A Well, vocational school is a trade school so I took—your first two years you take general courses and basic shops, decide what you want to major in.

When I first left grammar school I wanted to be a mechanical engineer. Therefore, you have to major in machine drafting.

Well, when I became—when I went to CVS I changed my mind and I took a few shops like horticulture, auto and print shop. Then in my 2A semester I took machine shop which I decided for my major and I majored in machine shop which is learning to be a machinist.

You take—that is the beginning of your junior B semester. You take machine shop and that is for about four hours a day. You take your regular courses such as English, Math, et cetera.

Q Well, Jerome, when you were looking for work after you graduated from high school, did you apply to any machine shops?

A No, sir, I didn't.

Q You said you also took horticulture?

A Yes, sir.

Q Did you apply to any florists?

[fol. 10] A No, sir. Well, I took horticulture when I was a freshman and it interested me just for a period of time and like I changed my mind.

After high school, well, machine shop is a nice trade but like it's very hazardous so I didn't apply at any machine shops. I did during our school semester because our shop teacher tried to get us jobs but, you know,

everybody applied but we just—they didn't take too many from CVS.

Q They didn't take—

A They didn't take too many students from CVS at different machine shops so there wasn't any need of applying during the summer.

Q All right. What else did you do that summer besides what you have told us about?

A I don't understand.

Q Did you do anything else during the summer of 1968 besides applying for work in the department stores and playing basketball?

A Oh, yes. I went to a camp for a week and worked as a counselor.

Q What camp was that?

A Camp Algonquin. It's a branch of United Charities of Chicago. And there wasn't much pay but like it was [fol. 11] a free room and board and meals and it was interesting, you know.

Q Were you paid for that?

A Yes.

Q How much were you paid?

A About $55.00.

Q For the one week?

A For the one week.

Q Where is Wilson Junior College?

A Located at 7042 South Stuart Avenue.

Q South—

A Stuart.

Q Did you apply at any schools?

A While I was in high school I applied at Robert Morris University which is located in Georgia or Alabama, one. I am not quite sure—I don't remember. And Tuskegee Institute in Alabama.

Q Were you accepted for either one of those two?

A No, sir, I wasn't because I didn't finish with my regular class. I was a half a credit behind.

Q What was the reason that you were a half a credit behind, Jerome?

A Well, I took drafting in my second year, sir, and I didn't pass the course because I lost interest in it then.

[fol. 12] I took it in summer school and finished with a straight B average this past summer of August of '68 and I think that might be one of the majors I might take this coming semester at Wilson.

Q Did you apply for any scholarships?

A No, I didn't. I was hoping to go to college with a basketball scholarship.

Q Pardon?

A I was hoping to go in college with a basketball scholarship but you need your coaches help but the coach didn't help our team too much. He had his favorites and I guess I wasn't one of his favorites.

Q But you were the center of the first team?

A Yes, sir, I was.

Q Did your high school team win the state championship or city championship or any championships?

A We started our season, we went undefeated until—we won our first game and lost our second game. From then on we won ten straight games.

We beat high ranked Marshall from the South Side. We were at eleven to one and we were playing at the Holiday Tournament at the Amphitheatre against Du-Sable and we lost to them.

[fol. 13] So from then on we just kept losing because our coach, he didn't give us the right reaction so we kind of went—

Q What did you take up at Wilson Junior College when you started?

A My first semester I took German, Math 95 which is Algebra, Literature, Britsh Contemporary American Literature. That's about three or four courses.

Q Is there any particular type of course that you took? Does it have a name like General Liberal Arts or Prelegal or anything like that? Do they have that there?

A It would be considered Liberal Arts courses.

Q Liberal Arts courses?

A Right.

Q Do they also have other courses at Wilson Junior?

A Yes, sir, they do.

Q And you have completed how many years at Wilson Junior College?

A One.
Q And that's been Liberal Arts?
A Yes, sir, it has.
Q And how many credits have you received?
A Up to date would be between seventeen and twenty-
[fol. 14] three.
Q Now, Wilson Junior College is just a two year school, sir?
A In most cases but most students stay there for three.
Q For how long?
A For three years.
Q Three years?
A Yes, sir, they do.
Q How about Liberal Arts, is that a three-year course?
A None of the courses are really three years but you wind up staying three years because most black students when you go to school you get involved in your courses but you wind up taking three years because you usually don't pass all your courses your first year or your second year because you didn't study hard enough and there was other things conflicting with your study.
Q Well, in the normal course of events, how many semester hours should a person have if he takes a full course and passes everything per year?
A In order to stay out of the draft you are supposed to have thirty academic hours.
Q Per year?
[fol. 15] A Per year.
Q And you have how many?
A Between seventeen and twenty-three.
Q Well, do you know whether it's seventeen or twenty-three?
A Well, I don't have my information with me.
Q Did you take a full course during this past year of thirty hours?
A The first semester I took fifteen, sir. The second semester I took twelve and they don't include gym.
Q That is a total of twenty-seven hours, sir?
A Yes, sir.

Q And did you pass all twenty-seven hours?
A No, sir, I didn't. The first semester I didn't pass Advanced Biology.
Q In the first semester out of the fifteen hours that you took how many hours did you pass and how many hours did you fail?
A Four hours I failed and eleven I passed.
Q In the second semester of the twelve hours that you took how many did you pass and how many did you fail?
A Well, I don't have my reference letter. They send you a letter in the mail of your grades.
Q Well, approximately, do you know what you failed [fol. 16] this semester that just passed?
A Math 101.
Q And how many hours is that?
A Three.
Q So would it be correct to say that you passed nine hours and failed three?
A I suppose we could assume that, sir.
Q Well, you are the one who knows that best.
MR. GOLDBERG: If he doesn't remember, there is no sense in putting words in his mouth.
BY MR. GENIS:
Q I say—I mean if you know, tell us. If you don't know what you passed and what you failed—
MR. GOLDBERG: If you don't remember say so, that's all.
A Well, we will say nine and three, sir.
BY MR. GENIS:
Q Pardon?
A Nine hours passed; three hours failed.
Q Well, do you know how many hours of credit you have at the present time?
MR. GOLDBERG: You have asked that question three times and he has answered it three times.
MR. GENIS: Well, he said seventeen to twenty-three. [fol. 17] MR. GOLDBERG: That's right. He has said that three times.
A When I said seventeen to twenty-three, sir, I mean between seventeen hours. It might be eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three.

MR. GOLDBERG: He doesn't remember beyond that specific point.

BY MR. GENIS:

Q And how many hours do you need to complete Wilson Junior College?

A Sixty for a two-year course, sir. You receive a two-year degree. That is why I say some students go about three years to complete sixty hours and some of them are far more intelligent than I am.

Q Jerome, in addition to going to school what else did you do with your time during this last school year?

A I played basketball for Wilson Junior College.

Q And are you on the team?

A Yes, sir, I am.

Q And what position do you play?

A Forward.

Q And are you on the first team?

A Second team.

[fol. 18] Q And how much of that—how much time does that take of yours?

A Well, after regular class hours, about three hours, from about 3:00 o'clock until about 6:00 P.M.

Q All year?

A All year, up to April. From November to April.

Q And how about after April?

A Well, then, I didn't participate in any sports.

Q Pardon?

A After that I wasn't participating in any sports. I was going to school.

Q What else do you or did you participate in besides your classroom work and basketball?

A Not too many things to participate in at Wilson unless you participate—like we recently had a black student demonstration and we removed our Dean.

Q You did what, sir?

A We had a new Dean. Our old Dean was replaced by a black Dean, sir.

Q And you participated in this demonstration?

MR. GOLDBERG: I don't think this is a relevant line of questioning.

A No, I wasn't participating. I said that is what [fol. 19] happened. I didn't participate.

BY MR. GENIS:

Q What did you do, not what others did?

A Nothing else. Go to school. When basketball season was over I just went to school, studied, did my work.

Q Well, how much time a day do you spend studying?

A Well, it varies. Usually it's about two or three hours a day. And then like when—when I have a final exam or something coming up, it's from three to five hours.

Q Do you feel if you devoted more time to your studying you'd do better in your grades?

MR. GOLDBERG: Come on, now. I object to this line of questioning. This is irrelevant. Where is this leading us?

BY MR. GENIS:

Q Well, let me ask you this, Jerome. Outside of going to school and playing basketball, do you do any work of any kind?

A Odd jobs.

Q What kind of odd jobs?

A Well, some people that live in my neighborhood, [fol. 20] I wash their cars, their windows, help them do general housework maybe, you know, like maintenance housework like repairing something, a window or fixing up their floor, laying down linoleum tile, helping laying wall-to-wall carpeting, something like this.

Q Anything else?

A That's about it. That is mostly what I do.

Q Do you get paid for that?

A Yes, sir.

Q And how much did you make this past year doing those odd jobs?

A Well, I could estimate for you. I couldn't say exactly because, you know, people pay you different prices.

Q Well, estimate for me either by the week or the month or the year.

A Well, I'd say about—by the week it would be about between $5.00 and $7.00 maybe.

MR. GOLDBERG: Would it vary from week to week?

THE WITNESS: It would vary.

MR. GOLDBERG: Some weeks that you didn't earn anything.

THE WITNESS: Right.

[fol. 21] BY MR. GENIS:

Q And some weeks you earned a lot more?

A Yes.

Q What do you do in the evening, sir?

A Now?

Q No, during your school year.

A Well, during the school year I was playing basketball during the evenings until 6:00 o'clock. Then I would go home.

Q All right. What did you do after that?

A Eat, study.

Q How did you spend Saturdays and Sundays.

A Well, I tried to coach the little grammar school basketball team.

Q Did you get paid for that?

A Sometimes.

Q What grammar basketball team did you coach?

A St. Clair located on 64th and Woodlawn.

Q And were you paid by the Chicago Board of Education for this?

A No. They are a Catholic school.

Q Who paid you?

A Well, they have a Board of Trustees there. The black neighborhood parents which—you know, they collect [fol. 22] a fund and they will pay you for it like that.

Q And how much do you get paid for that?

A Well, it would be $25.00 a month when they paid but a lot of times the funds were low so I just went on coaching anyway because it was something that interested me and I was helping somebody that didn't get the help that I needed when I was their age.

Q What do you expect or hope to be eventually after you finish with school?

A A basketball coach or a draftsman.
Q Are you studying drafting in school now?
A I didn't study it my first year but I intend to take it up this coming year.
Q And after you finish Wilson Junior College, what do you expect to do?. Do you expect to go to another school?
A I hope so, sir.
Q Do you have any idea what school?
A Well, one out of the state probably. Maybe University of Wisconsin.
Q And how do you expect to finance yourself going to the University of Wisconsin?
A Scholarship.
Q What kind of a scholarship?
[fol. 23] A Athletic. Possibly—if possible, academic.
Q Have you made—
A No, I haven't made any applications yet.
Q Did I ask you if you have applied for any sort of scholarships?
A You asked me if I did that after I finished high school, yes. And I said no.
Q What are your various sources of income that you and your mother live on?
A Well, the old age survivors insurance and AFDC.
MR. GOLDBERG: No.

BY MR. GENIS:

Q Old age survival?
A Insurance.
Q Is that something that you get or your mother gets?
A I receive that.
Q And what does that amount to per month?
A Forty-six, twenty.
Q Forty-six, twenty?
A Right.
Q And why are you getting that, sir?
A For living principally, sir.
Q But how do you qualify for that?
[fol. 24] A Well, I believe it's through my father, sir.
Q Can you tell us the situation whereby you have qualified for this, if you know?

MR. GOLDBERG: If you don't know, you can say that you don't know.

A Well, I don't know.

BY MR. GENIS:

Q Outside of this old age survival insurance, what else comes in?

A My mother receives a check.

Q For what?

A For general principles to help her out. I guess it's like welfare. I am not sure.

Q Is that general assistance or disability assistance?

A General assistance.

Q General assistance?

A Yes, sir.

Q Do you know how much that amounts to?

A Well, sir, it was one thirty-four, ninety-two. Now it's one, eleven.

Q Per month?

A Per month.

Q What else comes in?

[fol. 25] A That's it.

Q In addition there are these various things that you earn on the side doing odd jobs?

A Yes, sir, from time to time.

Q Which amounts to about $5.00 to $7.00 a week?

A And it varies. Some weeks more, some weeks less.

MR. GOLDBERG: Let's clear the record so it's understandable and not confusing.

When did it change from $134.00 a month to $111.00? Let's make sure there's no confusion here.

THE WITNESS: I believe in November, somewhere in that area.

MR. GOLDBERG: Prior to the lawsuit here?

THE WITNESS: Right.

BY MR. GENIS:

Q November of what year?

A '68.

Q When did your school term end this summer?

A June 6th.

Q And what have you been doing, sir, since June 6th?
A Well, applied for jobs as usual.
Q Tell us where and when.
[fol. 26] A Well, I went back to the public library again because I figured—I worked there once before back in '65 when I was in high school and I quit them because of my grades. It was taking up too much time from studying and I went to the Hyde Park Co-op located on 55th.
Q What are they?
A It's in the Hyde Park Drexel Neighborhood, black and white co-op, co-operation together that is what it means. It's a very integrated neighborhood and its the only neighborhood in Chicago where the black and white people get along together.
Q Is that an employment agency?
A It's a grocery store and it was named Co-op.
Q Outside of the Chicago Public Library and this grocery store, where else did you apply?
A Well, I also applied at a few more of the department stores.
Q Pardon?
A The department stores downtown.
Q Which ones?
A Rothchild's and Marshall Field's downtown. And I had a friend worked at the Jack-in-the-Box restaurant. I applied there. And Sears on 79th Street. I went to the Illinois State Employment Service.
[fol. 27] Q You did? When?
A Roughly about the second or third week in June. They didn't have anything at the time and couldn't suggest any place so like there was no job until who knows when. So I just played ball as I always do.
Q You've been playng basketball all this summer?
A Yes, sir.
Q With whom?
A Well, I have my own team and we played earlier together in the fall tournament up at the Hyde Park Neighborhood Club and we are now participating in the Hyde Park Neighborhood Club.

Q And how much time do you spend playing basketball or practicing basketball?

A Between five and six hours maybe. It varies.

Q Pardon?

A Between five and six hours maybe. It varies.

Q Per day?

A Per day.

Q Every day?

A Every day. It varies, though. Maybe one or two some days.

Q Do you practice or play Saturdays and Sundays, too?

[fol. 28] A Occasionally.

Q And sometimes in the evening?

A Now and then.

Q Do you get paid for any of this?

A No, sir.

Q Do you have to pay entrance fees at these various tournaments that you enter?

A Well, like I said, it would cost you a dollar a man if you put a team in. Some places you can just go and you just—well, I used to be a member of the neighborhood club so I am an old member of the club so to speak. I am not a full member now but like I can go in and play ball or watch a tournament game or watch the younger boys play and help out, show them how to do different various things.

MR. GOLDBERG: For free?

THE WITNESS: For free.

BY MR. GENIS:

Q Well, do you think if you spent more time studying and less time playing basketball you might do better in your grades?

MR. GOLDBERG: I object to that question. I believe that's an irrelevent question and it certainly is not a fair question to be asked at this time. I ask my client not [fol. 29] to respond.

BY MR. GENIS:

Q Subject to your objection for the record, will you answer that?

A Let me put it like this to you, sir. I have—I like, you know, school. School is real nice and it has its ups and downs, too. I don't believe that if I stopped playing basketball that my grades would be any better. I know that if I just put my mind to it I can do both because I know what type of person I am. I know what I can achieve and, sir, ever since I started playing basketball it's been part of my life, a main part of my life and like to play basketball to have to eat it, live it and drink it and that is what I do.

And, you know, really to do anything, you just have to believe in it and believe in yourself and basketball has given me a great deal of confidence in myself so, therefore, if I just put my mind to studying harder than what I did. I studied but I didn't study hard enough. That is one reason for passing so many hours this past year. If I just put my mind to do it, I can do it and play ball, too.

Q Well, is there any particular reason why you cannot or did not put your mind to studying harder?

[fol. 30] A Well, no, sir. It's not no particular reason. I just guess—I believed in my eyes that I was studying hard and I guess I wasn't studying hard enough. It's just like when you study, I guess, when you study law. You know, when you started out you had to do so much and so hard and you did it right away the first time.

Well, I made a mistake. I didn't do it hard enough the first time so there is always a second time, you know, and the second time will be better.

Q Do you feel that your grades—your current grades in school would qualify you for the University of Wisconsin or any state university?

A Not now, sir, but at the end of this next year I believe it will.

Q Do you believe that your basketball ability is good enough to qualify you for an athletic scholarship at the University of Illinois or any other university?

A Yes, sir, I do.

Q You are currently on the second team at Wilson Junior College, correct, sir?

A Right.

Q Do you have any relatives that help you out in any way financially or materially either to you or your mother?

[fol. 31] A No, I don't.

Q Do you have any friends that help you out in any way, either financially or materially?

A No, sir, I don't.

Q Do you get anything from any charities?

A No, sir.

MR. GOLDBERG: Did you at one time get anything from charity?

THE WITNESS: Once, United Charities.

MR. GOLDBERG: What was that and how much?

THE WITNESS: $20.20.

BY MR. GENIS:

Q When was this?

A About in February or March.

Q Of this year?

A Of this year.

Q Had you applied for that?

A Well, it was made known to me by a lawyer that it was possible to receive some funds because we needed them at the time.

Q You mean Mr. Goldberg, your lawyer, told you it was available?

A Yes, sir.

MR. GOLDBERG: I suggested that they apply to [fol. 32] United Charities for some sort of assistance.

BY MR. GENIS:

Q And you did apply, sir?

A Yes, sir.

Q And you got $20.20?

A Yes.

Q And that's all?

A That's all.

Q Did you ever do any work for the United Charities?

A Well, like I told you, I worked at that camp that one week and it was a branch of United Charities.

Q And when was that? A year ago this summer?

A A year ago this summer.

Q How about this summer, did you apply for that work?

A Well, they sent me a letter, sir. They have sent me a letter.

Q Saying what?

A Asking me to come and work for a week and if I knew of anybody that needed the same kind of work that wanted to work for a week.

Q And did you?

A Well, I haven't returned the letter yet, sir.

[fol. 33] Q When is this week's work supposed to be?

A It starts August 22nd to the 31st.

Q Do you expect to apply for that?

A Possibly.

Q Or do you expect to play basketball?

A Well, I don't know, sir.

Q Did you work for the United Charities in the summer of 1967?

A Yes, sir.

Q And what did you do then for them?

A I worked for them for two months in the dining room as a kitchen helper.

Q Where?

A At United Charities Camp, Camp Algonquin.

Q And do you remember how much you made?

A $115.00 a month.

Q $115.00 a month?

A Yes.

Q And you worked two months?

A Yes, sir, from June to August.

Q Let me see if I can refresh your memory. Didn't you make $289.63?

A I didn't make that much money, sir.

Q You did not?

[fol. 34] A. We were paid every other week and when it totaled it wasn't quite that much money. Try $230.00.

Q Did you apply for the same work for the summer of '68?

A I applied—probably I applied. I don't remember. I have a friend that works there. He worked the same summer. As a matter of fact, no, I didn't apply.

Q You did not?
A No.
Q Did you apply for that this summer?
A No.
Q Was there any reason why you did not apply this summer?
A Yes. I wanted to play ball. See, you are up there and you are remote and away from everything. It's nice to go and work if you want to just lay back and relax and get mosquitoe bites and stuff like that but if you want to stay in the city where the air—it's not quite as fresh but like it's—it's a little more active to participate in basketball.
Q Is that the same reason you didn't apply last summer?
A Well, I knew I wasn't going back for a whole two [fol. 35] months. You kind of miss things in the city, you know, like girls for one thing.
Q Girls?
A Yes.
Q Do you date, sir?
A Occasionally.
Q When you date what do you do? Do you go to movies?
A Go to a movie.
Q Go to dances?
A Dances.
Q What other social activities do you participate in in addition to dating and—rather, in addition to movies and dances when you go out with the girls?
A Well, that would be about it. That is the most you can do right now.
Q Do you go swimming or things like that?
A I go to the beach occasionally. Take a girl to the beach, yes.
Q What else, sir?
A We might go a lot of places. To museums. You can take a girl to the museum. It doesn't cost you anything.
Q What else?
[fol. 36] A Come down to the library even.

Q Pardon?
A Come downtown to the library, to the Randolph Street library.
Q Do you have a girl friend?
A Yes, sir.
Q And how long have you had a girl friend?
A The same girl for three years.
Q Do you date anybody else?

MR. GOLDBERG: I fail to see the relevance of this line of questioning. It's certainly not germane to the issues here. In fact, this whole thing is really—you know, this is turning into a wild fishing expedition and I object to inquiries into his personal life.

You have asked if he goes out on a date. Yes. The answer is yes, he does once in awhile. He goes to a couple of movies and goes to a lot of free places because he doesn't have much money and I don't see whether its relevant if he goes out with one girl steady or four girls occasionally. How is that germane to this lawsuit?

BY MR. GENIS:

Q Do you have any sisters or brothers?
A I have a sister.
Q Is she older or younger?
[fol. 37] A Older.
Q Does she live with you folks?
A No.
Q Does she contribute anything?
A No, sir, she doesn't.
Q Does she help out in your home?
A No. She has her own family.
Q Pardon?
A She has her own family to look out for.
Q Do you live in an apartment building?
A Yes, sir.
Q How big an apartment is it?
A Two and a half rooms.
Q Do you do anything in the apartment?
A General housework. Wash dishes, sweep up.
Q Or does your mother do the housework?
A She does most of it. I do a little.

Q Do you have a social security number?
A Yes, sir.
Q Do you know what it is?
A 346-44-3544.
Q Do you remember when you got that?
A I guess when I was about fourteen or fifteen.
Q Do you drive a car?
A No, sir, I don't.
Q Do you know how?
A Well, I applied for a permit in '65 and I didn't have anybody to take me down there in the car because we don't own one so I reapplied for another permit not too long ago, about '66, '67. But like I haven't been behind the wheel of a car for about two or three years.
Q You have or have not been?
A I have not been.
Q Do you have a bank account?
A No, sir.
Q Do you have any insurance?
A No, sir.
Q Do you have a TV at home?
A Yes, we do. We do, sir.
Q Do you have a radio at home?
A Yes, sir, pocket size transistor.
Q Do you watch the TV?
A Occasionally.
Q What is your sister's name, sir?
A Ruby Willis.
Q Does she live near you?
A She lives over in Hyde Park.
Q How far away from you?
[fol. 39] A She lives on 54th. I live on 65th.
Q About a mile away?
A Roughly.
Q How do you get to school?
A CTA transportation.
Q Do they supply you with lunches there?
A Sir?
Q Do they supply you with lunches there?
A No, they don't.
Q Does it cost anything to go to Wilson Junior?
A You pay for your credit hours, sir.

Q How much do you pay?
A Well, to be a full time student to pay for fifteen hours I had to pay fourteen, fifty.
Q $14.50?
A That was including a lab fee.
Q Is that a semester or a year?
A Semester.
Q Do you have any other costs there?
A Well, no, that's about it, I guess.
Q Do you eat lunch there?
A Most of the time.
Q Do you have any uncles or aunts?
A Yes, sir.
[fol. 40] Q Do any of them live close by?
A No, sir.
Q Do any of them contribute to you or your mother in any way?
A No, sir.
Q Do you ever do any babysitting?
A I used to babysit for my sister.
Q Did she pay you for that?
A Sometimes.
Q Is your only activity in school now besides your studying basketball?
A Yes, sir. What other activity is there?
Q What?
A What other activities would there be?
MR. GOLDBERG: Just answer.

BY MR. GENIS:

Q I don't know. It's so long since I have gone to high school. Well, there are other types of teams as an example, aren't there?
A Teams?
Q Teams besides basketball.
A Yes.
Q You did play football at one time, didn't you?
A I went out for football in high school but like [fol. 41] I played on the junior team for the summer, you know, spring training but I didn't come back. You were supposed to practice over the summer. I wanted to stay with basketball.

Q Did you apply for the football team here in Wilson Junior?

A No, sir.

Q You were also active in dramatics at one time, weren't you, in grammar school—or high school, rather?

A In high school at the Jackson Park Field House.

MR. GOLDBERG: I fail to see the relevance of this line of questioning. The question is whether or not he's entitled to assistance while going to college, not what he did in grammar school.

MR. GENIS: One of the questions is what he does with his free time.

MR. GOLDBERG: In grammar school?

MR. GENIS: No, no.

BY MR. GENIS:

Q Now, do you participate in dramatics now?

A No, sir, I don't. I considered it.

Q Pardon?

A I have considered it.

Q I'm sorry?

[fol. 42] A I have considered it.

Q Did you attend the YMCA in any way?

A I have in the past. Not as a member. Just to go play basketball.

Q For the YMCA?

A No.

Q Just use their gym for that purpose?

A Yes, sir.

Q Outside of your girl friend, I take it you have boy friends?

A Partners, yes, friends.

Q Partners?

A Friends.

Q I don't know what you mean by partners. I know what a friend is.

A Well, same term to me. It means the same term.

Q And do you visit with them now and then and go places and do things?

A Yes.

Q These various places that you applied for a job, did they tell you why they didn't hire you or wouldn't hire you or couldn't hire you?

A Well, most of the jobs I applied for didn't have any openings. We will call you. Don't call us.

[fol. 43] We will call you.

Q What is your draft status, sir?

A I am classified 2S.

Q What?

A 2S, Student deferment until October.

Q Of this year?

A Of this year.

Q And if you go back to school then are you deferred again?

A Probably so. I won't know until I send in the form.

Q Were you referred once to the Welfare Rehabilitation Service?

A No, sir.

Q For a job?

A No, sir.

Q You weren't?

A No.

Q Are you familiar with that organization, Welfare Rehabilitation Service?

A No, sir.

Q Was it suggested to you that you contact the Youth Commission for part time employment during the summer?

[fol. 44] A No, sir.

Q It was not?

A No, sir.

Q Did you take a college exam for Tuskegee?

A I took the ACT Test, American College Test and SAT Test which is a Scholastic Aptitude Test.

Q How did you come out?

A They don't send the grades to you, sir. They send them to the schools. The ACT Test went to Wilson.

Q Pardon?

A The SAT Test you never find out. The schools don't say anything. I guess you have to assume you are not accepted.

Q Do you get any general assistance?
A No more than what I told you on the survivor's.
MR. GOLDBERG: You are not familiar with the various technical categories of assistance, are you?
THE WITNESS: No, sir.

BY MR. GENIS:

Q Do you get any money from either the County of Cook or the State of Illinois?
A Well, I don't know, sir.
Q Well, this money that you do get, do you handle it or do you give it to your mother to handle it?
[fol. 45] A I give it to my mother to handle. It's in care of me for Loverta Alexander, care of me.
Q Was it suggested to you by anybody connected with the Cook County Department of Public Aid that you try for various scholarships?
A No, sir.
Q Weren't you at one time classified as 1A?
A As soon as I turned eighteen.
Q And what happened then?
A I sent a letter from the school. They have a form that you fill out stating that you are in school as a full time student. You send this into the military or to the draft board and you wait for them to return your answer and they should do so within two or three weeks but it took a month. I sent that in about the second week of September. I didn't get my draft form until the last week in October stating that I was 2S.
Q Was there an appointment made for you with the Welfare Rehabilitation Service both in October of 1968 and November of 1968 and you failed to keep both appointments?
A No, sir, there wasn't. I don't recall any such appointments.
Q In January of '69 weren't you referred to the Jane Addams House to attempt to seek a scholarship?
[fol. 46] A No, sir.
Q If the State of Illinois is able to find a job for you, will you quit school and go to work?
A No, sir.

Q If they are able to find a part time job for you, will you quit basketball and spend part time working?

A No, sir.

MR. GOLDBERG: Will you explain why?

MR. GENIS: Just a moment. After all, I am taking this.

THE WITNESS: Could I ask you a question, sir?

BY MR. GENIS:

Q Do you have a telephone at home?

A No, sir.

Q You do not?

A No.

Q Is there a phone in your apartment?

A No, sir.

Q You live at 6531 South Kimbark Avenue, correct?

A Correct.

Q Apartment 1C?

A Correct.

Q Does the telephone number 667-7797 mean anything [fol. 47] to you?

A Used to be my grandmother's phone number.

Q What?

A Used to be my grandmother's phone number.

Q In your apartment?

A Not in my apartment. In her apartment before she passed away.

Q Pardon?

A In her apartment before she passed away in September of '65.

Q In September of—

A 1965. It was her phone number. What happened to it after that, I wouldn't know, sir.

Q Where did she live at that time?

A On 60th and Wabash.

Q Did she live with you folks?

A No.

Q And what was her name?

A Ruby J. Mitchell.

MR. GENIS: Mr. Bilton, would you like to ask any questions?

MR. BILTON: Just a few.

[fol. 48] EXAMINATION BY MR. BILTON

Q Mr. Alexander, in your second semester you carried twelve hours, is that correct?

A Yes.

Q Were those four three-hour courses that you carried?

A Yes, sir.

Q Did you go to school five days a week?

A Yes, sir.

Q So you averaged less than three hours a day in school, is that right, as far as course time is concerned? I am not talking about basketball.

A Yes, as far as course time is concerned.

Q During that period of time during your second semester last year did you consider getting a part time job?

A Yes, sir, I tried even.

Q Where did you try to get a part time job?

A The Co-op send me a card stating they had an opening.

Q The grocery store?

A And it was an opening as a bag boy. You know, you bag all the groceries as they come out. And like you [fol. 49] have to take a manual dexterity test.

The part I couldn't understand is that I play basketball and it takes a lot of co-ordination but on this manual dexterity test where you put round blocks in different holes, I failed that according to her. My manual dexterity wasn't up to level.

I couldn't understand that but that is what happened there. And I applied through school where you have the student work study program and like it was closed. And they told me they—I kept on going and they kept telling me to come back and come back.

We have offices across the street that says job openings and I went over there. They wanted somebody twenty-one to drive for the CTA. That left me out there, too.

Q Well, you have some experience in library work, don't you?

A Yes, sir.

Q And you are also experienced somewhat as camp counselor?

A Yes, sir.

Q And as a basketball coach?

A Yes, sir.

Q You were trained in high school machine shop [fol. 50] work?

A Yes, sir.

Q Print shop work, is that right?

A You take that for a semester.

Q Now, during that semester—that second semester at Wilson when you were going to school, with course work less than three hours a day, did you try to get a part time job in any library in town?

A I did apply back at the main branch of the library.

Q And what happened there?

A Well, they called me in for an interview and like they said they might have openings tentative but like the boy that was not there came back to work so—

Q What about the library at Wilson?

A Well, the library at Wilson is on Work Study Program and it's a job so that they didn't have any openings there.

Q What about any libraries like the Crerar Library, the private libraries around there?

A I didn't try anything like that.

Q How about like—libraries like the Chicago Bar Association Library or the Chicago Law Library in the Civic Center, did you try to get a part time job in those [fol. 51] places?

A No.

Q Are you aware that those libraries did hire part time students?

A I wasn't aware.

Q Did you apply to the YMCA as either a counselor for the youth part time or as a weekend basketball coach in any way?

A No, sir, I didn't.

Q Have you tried to apply to the Park District as a basketball coach or youth counselor?

A No, sir.

Q Did you try to apply to any machine shop or print shop around town for part time work?

A As I told him, sir, when I tried it in high school we went through a lot of changes and some changes were due to the fact of the color of our skin. Not open out, you know, but under the table bit, you know, like that though—

Q Well, did you make any application during your second semester at Wilson for any machine shop here in town or print shop here in town?

A No, sir. Machine shop was my major but like it wasn't the major I wanted but like it was second best so [fol. 52] that is why I have it.

Q It would make you more money than being a packer in a grocery store, wouldn't it?

A Yes, sir, it would.

Q And have you made application during this past summer for any library work at all?

A The good old downtown Chicago Library.

Q Again they turned you down?

A Yes.

Q Any camp for the summer?

A Just that one week they might have an opening.

Q Other than that you were not interested in becoming a camp counselor?

A Maybe if I had tried it she might have an opening. Crocker is the lady's name, but—

Q But you didn't try?

A No, sir.

Q And you didn't try to be a basketball coach this summer at all any place?

A Like I am coaching the grammar school team. Some of the fellows I am just helping them out this summer.

Q During the summertime that job isn't open to you, is that right?

[fol. 53] A. No, sir.

Q During the summertime the Park District do have leagues for youngsters?

A They have leagues for youngsters but they are mostly sixteen through nineteen.

Q Every YMCA around town has basketball for youngsters where they need coaches?

A Well, I could be a coach for the boys my age between sixteen and through nineteen but they don't have a summer for little boys.

Q Don't they ever need summertime advisers for the little boys?

A In some areas.

Q Have you made application into any YMCA to get any of these jobs?

A Not to any Ys.

Q During the summers when you are not going to school, have you tried to get a job in any print shop around town?

A Well, see, I was telling you that like it was horticulture, auto shop and print shop that you take subsequently before you go into your major like this to help you decide.

[fol. 54] I tried it because I thought I might like them. Print shop is all right. It's nice. And like, you know, you read in the paper, you see articles we have an opening at Donnelly, R. R. Donnelly and Son and like you call that. I call a lot of numbers, you know, like that but like it wasn't no luck with them either. They usually wanted an older person.

Q Did you try to get summertime employment this summer at any print shop?

A No, sir. No further than—well, phone calls.

Q Well, is it true that if you were offered a part time job you would not accept that job if it interfered with your basketball, is that right?

A Well, I guess you could say that, sir, because like if I just get the right break and the right chance I would like to go into the pros. I think I am fairly good enough. It takes a few more years to be really good enough and it's hard to get into the pros unless you go from college and you make your name big but there is a chance, you know.

Q You are not carrying enough work load to maintain your 2S deferment?

MR. GOLDBERG: I object to that question. He is not the judge of that. It's his draft board and he is not qualified to answer that.

[fol. 55] MR. BILTON: He already gave an answer.

MR. GOLDBERG: He is not qualified to pass on what 2S requirements require.

BY MR. BILTON:

Q Are you acquainted with what 2S requirements require as far as the number of hours you have to take during the year?

A Thirty, I guess.

Q And you did not take thirty last year, is that correct?

A Correct.

Q And how many hours are you registered for this coming semester?

A I won't know until I go.

Q You have not as yet registered, is that right?

A No, sir. They send you a permit to register.

Q Are you planning to take more than fifteen hours?

A If possible.

MR. BILTON: I have no further questions.

MR. GENIS: I'd like to ask just one or two questions more.

[fol. 56] EXAMINATION CONTINUED

BY MR. GENIS

Q How tall are you?

A Six foot, three or four.

Q What?

A Six, three or four, one seventy-five to one eighty in weight.

Q You said that you didn't take the major that you wanted to take. What major did you want to take?

A Well, like I said, sir, when I first came to CVS I wanted to be a mechanical engineer and you would have to major in machine drafting.

Well, it's like they ask you in grammar school what would you like to do and you give them some kind of

information but like you are ignorant of the fact and when you get in college you have a counselor but like your counselor is usually tied up with program changes for different students and they don't have time to help you out. That is one of the reasons why I didn't finish from Chicago Vocational on time. I was a half a credit behind and like it was about three or four students that graduated without taking drafting at all. And that was an unfair thing to me.

[fol. 57] And you couldn't run down to the equal rights rights place and say well, now, they cheated me out of this so it wasn't no go. So I went to summer school and proved to myself I could major in drafting if I decided to.

Q Well, is it drafting that you wanted to major in?

A That is what it would have been, sir.

MR. GENIS: I have nothing else.

AND FURTHER DEPONENT SAITH NOT.

[fol. 58] [Reporter's Certificate to Foregoing Transcript Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 2134

LOVERTA ALEXANDER, ET AL., PLAINTIFFS

*vs.*

HAROLD O. SWANK, ET AL., DEFENDANTS

The deposition of LOVERTA ALEXANDER, called by the Defendants for examination, pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before a Notary Public within and for the County of Cook and State of Illinois, on the 6th day of August, A. D. 1969, at the hour of 11:15 o'clock A. M., at 160 North La Salle Street, 9th Floor, Chicago, Illinois, pursuant to Notice and Agreement.
PRESENT:

MR. MELVIN B. GOLDBERG appeared on behalf of the Plaintiffs;

[fol. 2] HON. WILLIAM J. SCOTT, Attorney General, by MR. BERNARD GENIS, Assistant Attorney General appeared on behalf of the Defendant, Harold O. Swank;

HON. EDWARD V. HANRAHAN, State's Attorney, by MR. DEAN H. BILTON, Assistant State's Attorney, appeared on behalf of the Defendants, David Daniel and Mae Withers.

LOVERTA ALEXANDER,

having been first duly sworn, deposeth and saith as follows:

EXAMINATION BY MR. GENIS

Q Mrs. Alexander, will you please state your full name?

A Loverta Alexander.
Q Where do you live, Madam?
A 6531 South Kimbark Avenue.
Q Is that an apartment building?
A Yes, it is.
Q And do you occupy one of those apartments?
A Yes.
Q With who?
A My son.
[fol. 3] Q Jerome?
A Jerome.
Q And Jerome is your only child?
A He is my only son. I have two children. One daughter who is married and my son.
Q And what is the name of your married daughter?
A Ruby Willis.
Q Willis?
A W-i-l-l-i-s.
Q And what is the name of your other child?
A Jerome Alexander.
Q Just those two?
A That's right.
Q And where does—is Ruby Willis married?
A Yes.
Q And does she have any children?
A She has five children.
Q Where does she live?
A She lives on 54th Street.
Q How far is that from you?
A I live at 65th.
Q And she lives at 54th?
A That's right.
Q About a mile away?
[fol. 4] A Yes.
Q Did she ever live near you?
A Oh, years ago. Near me, yes. She lived on 67th Place years ago.
Q And does she render any aid—
A No.
Q —to you or your son?
A No.

Q Do you render any aid to her or her children?
A No.
Q What does her husband do?
A They are separated right now.
Q Who supports Ruby Willis?
A ADC.
Q Now, what income do you get, Mrs. Alexander?
A I get a General Assistance and my son gets—he gets disability from—
Q How much General Assistance do you get?
A I guess $111.00.
Q Per month?
A Per month.
Q And how much disability does he get?
A He gets forty-six, sixty right now.
Q Per month?
[fol. 5] A Per month.
Q What else do you folks get, if anything?
A Don't get any. What we beg. We don't get any.
Q This forty-six, sixty, does that come to you for him or does that come to him directly?
A It comes to me for him because he is under twenty-one. It says Jerome—to Jerome Alexander—it comes to me for Jerome Alexander. That is the way it says.
Q Are you the one that takes care of the family finances?
A Yes.
Q Why does he get this disability?
A Well, he gets it from his father, his disabled father.
Q What is his father's name?
A John H. Alexander.
Q And where does he live?
A I don't know right at the present. Last time I heard he was in Georgia but that is hearsay. That is gossip, neighborhood talk.
Q Do you or he get anything else from the father?
A No.
Q How old a lady are you?
[fol. 6] A I am fifty-eight.
Q And when were you born?
A I was born July 17, 1911.

Q Do you have any sisters or brothers?
A Yes, I have a sister and a brother.
Q Where does your sister—what is your sister's name?
A Christine Garnes, G-a-r-n-e-s.
Q Where does she live?
A She lives 7504 Cornell.
Q Here in Chicago?
A In Chicago.
Q Is she married?
A Yes.
Q Is she on ADC, too?
A No, she is not.
Q Does her husband work?
A Yes.
Q Do they ever give you any kind of help of any kind?
A No.
Q Have they ever?
A No.
Q How about your brother, what is his name?
[fol. 7] A Leo Jones.
Q Where deos he live?
A 2901 West Washington Boulevard, Chicago, Illinois.
Q What does he do?
A He works at the post office.
Q Is he married?
A He has a family, a wife and two boys.
Q Does he render any aid to you of any kind?
A No, I seldom see him.
Q Or to your son?
A No.
Q Who is your landlord?
A Civil Wood Real Estate (phonetic spelling.)
Q And how much rent do you pay?
A Eighty-seven, fifty.
Q Per month?
A Per month.
Q And how big an apartment do you have?
A Two and one half rooms.

Q Does that include utilities?
A That's right.
Q Do you have a written lease?
A Yes.
[fol. 8] Q And is the lease in your name?
A My brother signed it before he died so I don't know how it's going to be from now on.
Q Which brother is this now?
A That was my baby brother, Thomas Jones.
Q Who paid the rent?
A I paid it. He just signed the lease because they wouldn't let a woman sign. You know how you all do things. I was working when I started living there but they wouldn't let me sign a lease because I am a woman.
Q And when does your lease expire?
A It expires the first—the 30th of—the 30th of September.
Q The what?
A The 30th day of September, 1969.
Q And when did you move in here?
A I moved in the 30th day of—let me see—I moved in the 30th day of—the first day of October, 1961.
Q 1961?
A That's right.
Q You say you were working at that time?
A That's right.
Q What kind of work were you doing?
[fol. 9] A Nurse's Aid.
Q And how long did you continue doing that?
A Until they closed the nursing homes down.
Q When was that?
A That was in '63, August of '63 if I am not mistaken.
Q Did you apply for any type of work after that?
A Yes, I did.
Q What kind of work?
A Nurse's Aid because that is all I have done all my life.
Q And where did you apply?
A I applied at different places at different homes, nursing homes.

Q Well, will you name those for us?

A Monterey. That is where I once worked. When they reopened that I applied for a job there.

They told me I was—they didn't have anything for my age over forty.

The Illinois Employment office said the same thing several times. I went to different clerks there and they said the same thing, nothing over the age of forty.

Q Which office did you apply at?

[fol. 10] A Illinois Employment Agency down here on Dearborn.

Q On Dearborn Street?

A That's right.

Q And when was the last time you applied?

A Well, the last time I applied was last summer.

Q You take care of your two and one-half room apartment?

A Well, with the help of my son. Sometimes I am not able to do anything because I have arthritis so bad I can't—sometime I can't raise my hand to comb my hair. And I can't bend my hand to wash dishes.

Q Can you bend your hand now?

A Yes, right now because I have it in my knees now. I have the traveling kind.

Q Are you able to take care of yourself at the present time?

A Not financially.

Q No, no, I am talking about physically.

A Well, yes. It's just at times. I go along with it.

Q You what?

A I go along with my ailments.

Q But you are able to take care of the house, are you?

[fol. 11] A Yes. All that don't get done, I do without it. It's not done.

Q Do you do cooking?

A I do most of the cooking. I do the cooking.

Q Do you do your shopping?

A My son do all my heavy lifting. I can't do much of that.

Q I understand, but you do the shopping and he carries it?

A Yes, I do the managing.

Q Who was Ruby Mitchell again?

A That was my mother.

Q Did she ever live with you?

A No.

Q Didn't you have a phone at your home at one time?

A Years ago I had my own phone when I was working. Mi 3-6064 was my number at that time.

Q And when did your mother pass away?

A In '65.

Q Do you have a bank account?

A No.

Q Do you have any insurance?

A No.

[fol. 12] Q Would you go to work if the State of Illinois could find you a job?

A If I am able to work, if I am able to do the work.

Q Well, if your employer was satisfied with your ability to do the work, would you go to work?

A Yes, I'd go to work.

Q Any type of work?

A Well, I don't know—I don't say any type because I can't do any type. I have never done nothing but nurse's aid all my life.

Q Well, you were employed as a seamstress once, weren't you?

A No. I tried out for a job but you can't pick up a person out there on the street and they don't know how the machine run and put them in one of these factories to work. ADC tried that on me and I hadn't had any experience.

Q Well, so—

A The first time I seen the power machine I looked over there and saw how she worked hers and I tried to work mine. How could I hold a job like that?

Q Did you leave voluntarily or did they let you go?

A No, they let me go because one place told me they [fol. 13] don't teach them on the job.

Q You were offered a job as a babysitter, weren't you?

A A babysitter?

Q Yes.

A No. I ain't got the patience with kids now.

Q Would you work as a babysitter?

A No.

Q Didn't you receive a vocational allowance at one time so that you could study something so that you could be employed?

A No. They sent me over here to Washington. I went over there but they didn't pay me for that and I wasn't studying nothing no way.

Q Pardon?

A That wasn't studying anything anyway.

Q Do you approve of your boy's basketball activities?

A I certainly do. That is his heart. That is his mind. Why not let him train for it. That is what I want to do.

Q Why do you feel that your son isn't getting better grades?

A Well, hunger is part of it.

[fol. 14] Q Pardon?

A Hungry. He don't have the proper food. The man was telling me eat fruit sometime and I never could have fruit juices and stuff like that for him. I didn't have the proper food all the time for him for this basketball. He lost weight. The coach sent me word he lost weight.

Q The who?

A Coach. I did the best I could with what I had.

Q Did you ever sit for your daughter's children, babysit for your daughter's children?

A No, I never babysit for her because when you babysit they pay you. But they come over there and I have help them for her but not to babysit for them.

Q Do you also feed them?

A If I had anything I would give it to them.

Q Well,—

A I wouldn't let them stay there hungry.

Q Do you ever have anything to give them?

A I have leftover beans or peas, whatever I had. I divided it.

Q Do you stay home all day?

A I certainly do. The only time I go out is when it's necessary. I go to the clinic or go to the store, something like that, if I can go, and if I don't go I send my [fol. 15] son. Sometime I can't walk.

Q When you say go to the store you mean grocery shopping, things like that?

A Grocery store, send out and get something, some milk or something.

Q Didn't Mrs. Willis live across the hall from you at one time?

A No. No, she has never lived in my building.

Q Didn't she live across the hall from you in 1968?

A No, she didn't.

Q Was your son ever advised to contact the Illinois Youth Commission for part time employment?

A Not that I know of.

Q Do you know whether or not your son was ever advised to try to scholarships?

A No.

Q You don't know or he was not advised?

A By who, Mister?

Q By anybody.

MR. GOLDBERG: If you don't know, just say you don't.

A I better say I don't know because I don't remember.

[fol. 16] BY MR. GENIS:

Q Does Jerome turn over to you all the money he makes on these odd jobs?

A No, he doesn't. He have to have something to spend for himself sometime. That is how he made the money for spending.

Q Do you give him any money?

A I don't have enough to give him, Mister.

Q How about this money that he gets because of his father's disability?

A I have to take that and pay part of the rent.

Q Do you give any of that money to him?

A Well, I might give him change, fifty cents or some-

thing like that but I never have nothing—no money to give. That is change.

I paid eighty-seven, fifty rent out of $111.00 and the rest I have to have it for food or carfare or some other little things.

What I mean by other things, like washing powder or soap powder or soap to take a bath or broom or something like that because they don't furnish that and I can't get that.

Q This general assistance that you get, doesn't that include also for your son?

[fol. 17] A Well, it might do the way they figure but he is not supposed to be on the budget.

Q Pardon?

A He is not on the budget. That is what we are fighting for now to get him on the budget.

Q Isn't part of the General Assistance that you receive for him?

A Some of the food I eat, some of the food there, that's all.

MR. GOLDBERG: Wait a minute.

BY MR. GENIS:

Q $28.27 is food for your son?

MR. GOLDBERG: Were you ever given a breakdown of your General Assistance budget so that you know what that $111.00 is?

THE WITNESS: No, I haven't. When I asked the worker when she came out to the house, when I asked her, she said I don't have my books with me now.

BY MR. GENIS:

Q Who is Mrs. Loverta Jones?

A That was my maiden name. Jones was my maiden name.

Q Do you have a telephone?

A No, I haven't.

[fol. 18] Q Have you ever had housekeeping services?

A Have I ever had it?

Q Yes.

A What you mean? Had it now? Somebody to render the service to me?

Q Yes.

A No, never in my life have I been that successful.

MR. GENIS: I have nothing further.

MR. BILTON: Nothing.

MR. GOLDBERG: I'd like to ask just a couple questions perhaps as long as we have the court reporter here and we can clarify this.

MR. GENIS: I think this is our deposition.

MR. GOLDBERG: All right.

MR. GENIS: That is all. Thank you.

Do they both waive signatures to this deposition?

MR. GOLDBERG: Will I get to see a copy of this?

MR. GENIS: We can show you a copy.

MR. GOLDBERG: With the understanding that I will see a copy of the transcript before it is submitted to the Court both parties will waive signature.

AND FURTHER DEPONENT SAITH NOT.

[fol. 19] [Reporters' Certificate to Foregoing Transcript Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68C 2134

LOVERTA ALEXANDER, et al, PLAINTIFFS,

*vs.*

HAROLD O. SWANK, Director of the Illinois Department of Public Aid, et al, DEFENDANTS

The deposition of GEORGIA TOWNSEND, called by the Defendant for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Court pertaining to the taking of depositions for the purpose of discovery, taken before ROSE MARY SLOWIK, a notary public within and for the County of Cook and State of Illinois, at 160 North La Salle Street, Room 900, Chicago, Illinois, on the 10th day of September, A.D., 1969.

[fol. 1(a)] PRESENT:

MR. MICHAEL LEFKOW,

on behalf of the Plaintiff,
Georgia Townsend;

MR. WILLIAM J. SCOTT, Attorney General, by MR. BERNARD GENIS, Assistant Attorney General,

on behalf of the Defendant,
Harold O. Swank, Director of the Illinois Department of Public Aid;

MR. EDWARD V. HANRAHAN, State's Attorney, by.

MR. DEAN BILTON, Assistant State's Attorney,

on behalf of the Defendant,
Cook County Department of Public Aid.

[fol. 2] MR. GENIS: This is the deposition of Georgia Townsend taken pursuant to notice that I served, as well

as an order that was entered by the Court requiring you to come here and to truthfully answer all questions that I may ask of you pertaining to this case.

GEORGIA TOWNSEND,

having been first duly sworn on oath, was examined upon oral interrogatories and testified as follows:

EXAMINATION BY MR. GENIS:

Q Mrs. Townsend, will you please state your name for the record?

A Georgia Townsend.

Q And you live with your daughter, I take it in the same place?

A Yes.

Q Do you mind telling me how old a lady you are?

A I am forty years old.

Q How long have you been receiving Public Assistance or Public Aid, whatever it might be called, when you first started receiving it?

A I believe, maybe about five or six years.

[fol. 3] Q Five or six years? From now about 1964 or '65?

A Something like that, I believe.

Q Well, I maybe wrong, and if I am you correct me, I thought the report shows that you started receiving aid in 1962?

A Well, it could be, I don't know.

Q And if you did start receiving aid in 1962—

A I don't think it was '62, it might have been. It wasn't any earlier than that.

Q Have you been receiving it ever since?

A Yes.

Q Was there any time that you did not receive any aid whenever it started, whether it was '62 or later?

A No.

Q And when you started receiving Public Aid was that what is commonly called A.D.C.?

A Yes.

Q And, it is A.D.C. at the present time?
A No.
Q A change took place?
A Yes.
Q And approximately when did that change take place?
[fol. 4] A Shortly after I became a recipient.
Q And did you go on what is commonly called Disability Assistance?
A Correct.
Q And do you recall approximately when that was?
A Well, I could only say shortly after I started receiving it.
Q And, by the way, are you a married lady?
A I was.
Q Do you remember when you were married?
A No, I don't.
Q Well, are you still a married lady?
A No.
Q Are you separated or divorced?
A Separated.
Q Are you divorced?
A I don't know.
Q What was your husband's name?
A R.C.
Q Townsend?
A Yes.
Q And, do you know where Mr. Townsend is?
A No, I have no idea.
[fol. 5] Q Do you remember how long you and Mr. Townsend lived together as husband and wife?
A Approximately, maybe a year, I really, I don't know.
Q And what is the nature of your illnes?
A Oh, I don't know. Really, I can't give you the name of it, but it leaves me where I can't do anything. I have terrible joint pains and something is wrong with both of my pelvics. I don't do anything for myself. I have vomitting spells, stomach trouble, my head bothers me.
Q Have you been under the care of doctors?
A Yes, I have.

Q Do you remember when it started?
A It has been at least ten years, I believe.
Q Did you ever work?
A No.
Q Well, let's go back before the ten years, did you ever work before you became ill?
A Maybe just a little, not really.
Q And what kind of work did you do, then?
A I sewed.
Q Sewed, do any other type of work?
A No.
[fol. 6] Q Who are the doctors that have been taking care of you recently, if there have been any?
A Dr. Smith, Dr. Baradi.
Q Spell the last name?
A I suppose you can do it as well, B-a-r-a-d-i.

OMEGA MINOR: B-h-o-r-a-d-a, or something like that.

GENIS:

Q Any other doctors?
A Besides those two?

OMEGA MINOR: Fataca, F-a-t-a-c-a.

MR. GENIS:

Q Where are those doctors?
A County.
Q Cook County Hospital?
A Yes.
Q How long have these three doctors been taking care of you?
A Well, Fataca, maybe about three years, Dr. Bhorada, you know they change.
Q And were there other doctors at Cook County that took care of you before?
A Yes.
Q And how long have you been going to the doctors at Cook County?

[fol. 7] A Ever since I became ill.

Q When was that?

A About ten years ago I have been ill, maybe a little more.

Q Well, have you during the ten years or more that you have been ill, have you been either on A.D.C. or Disability Assistance during those ten years?

A Yes.

Q And, of course, Cook County pays this expense?

A The hospital.

Q The doctors?

A Yes.

Q Have you ever been a patient at—

A No.

Q —at Cook County Hospital?

A Oh, yes.

Q Do you remember when?

A From the time I first took ill up until—

MR. LEFKOW: Maybe you ought to clarify if she was a bed patient.

MR. GENIS:

Q Have you ever gone to Cook County and stayed in bed?

[fol. 8] A Yes, certainly.

Q What I have in mind, do you remember when the first one was?

A Well, I was the first time, when I first got ill.

Q About ten years ago?

A Yes.

Q And how long were you in?

A Once I was there, I know once I was there for over six months, and one time confined.

MR. LEFKOW: His question was this first time?

THE WITNESS: Maybe a month or two, I really don't know. I have always been in and out.

MR. GENIS:

Q How many times were you what they call an in-patient where you stayed in bed for several days at Cook County Hospital?

A You will have to get the records, so many times I can't count them. It would be impossible for me to count them.

Q When was the last time you were a patient at Cook County Hospital.?

A In April.

Q Of this year?

[fol. 9] A Yes.

Q And how long were you there at that time?

A I think, seven days.

Q And the time before?

A I think, I went in January.

Q Of this year?

A Yes.

Q Do you remember how long you were there at that time?

A It was, yes, it was longer, but I don't remember exactly how long.

Q And, then in 1968, were you also in Cook County Hospital, that is last year, if you remember?

A Yes; I was.

Q How often do you go to Cook County Hospital—these doctors, did you go to see them at Cook County, or would they come out to your home?

A I go to see them.

Q Do you still go out to see them?

A Yes.

Q And how often do you go out to see them?

A As often as they require me to come.

Q And approximately how often is that?

A Well, sometimes once a month, sometimes every [fol. 10] two months. It is according to how they think I am doing.

Q And are they treating you for whatever your ailment is?

A Yes, as best as they can.

Q Right. And how do you get to the hospital?

A Cab.

Q And do you get home by cab, too?

A Yes.

Q And that is taken care of by Cook County?

A Yes.

Q They pay for that?
A Right.
Q And do you require certain medicines?
A Yes.
Q Is that paid for by Cook County Public Aid, also?
A Yes.
Q And your hospital bills were also taken care of by Cook County Public Aid?
A Yes.
Q When you are at home, are you able, or do you do any walking around?
A Sometimes.
[fol. 11] Q And do you also at other times sit up?
A Yes.
Q Are you ever confined entirely to your bed except when you sleep at night?
A Yes.
Q There are times you do that, too?
A Yes, that is correct.
Q And what are you able to do for yourself?
A I can feed myself if I am not too ill.
Q Yes.
A Oh, at times I can wash myself up.
Q Yes.
A And that is just about, maybe, I can, I mean after my daughter helps me dress, I can zip it up or button. Zippers are easier for me.
Q Did you at one time request nursing or housekeeping care for you at your home?
A Yes.
Q Do you remember when that was?
A No, but it's been over a couple of years, I think.
Q Did you get it?
A Yes.
Q A woman was sent in to take care of the house [fol. 12] for you?
A Yes.
Q Do you remember when that was?
A I said, maybe a couple of years ago.
Q And Cook County Department of Public Aid paid for that?

A Yes.
Q And how long did that last?
A Maybe a couple of months, something like that, if that long.
Q And she was in everyday to take care of you?
A No.
Q How often did she come around?
A Monday and Wednesday. I don't remember if she came Friday.
Q And did she clean the house?
A If you want to call it that.
Q What did she do?
A She messed up.
Q What was she suppose to do?
A She was suppose to take care of me and clean, cook.
Q Were you satisfied with her?
[fol. 13] A No.
Q Did you decide that you didn't want her anymore?
A No.
Q Who decided?
A The caseworkers or whoever he was, her supervisor.
Q Did you make a request for more housekeeping?
A Yes.
Q Did you get it?
A No.
Q Do you know why?
A No.
Q When you are at home, do you have a wheelchair by the way?
A Yes.
Q And how long have you had a wheelchair?
A For several years.
Q And where did you get it?
A Same concern.
Q Cook County Department of Public Aid?
A Yes.
Q Do you use your wheelchair, now?
A Yes.
Q How did you get here?

[fol. 14] A They brought me.
Q Who is "they"?
A My daughter and Mr. Lefkow.
Q How?
A In his car.
Q And, from the car did you walk to this building?
A Yes, they assisted me.
Q Where was the car parked, how far away?
A In front of the building.
Q And they assisted you into the building?
A Yes.
Q And you came up an elevator?
A Yes.
Q And with their assistance you walked into the office?
A And sat down.
Q Is your ailment getting any better, or any worse?
A It is not. It is not getting any better.
Q It is not?
A No.
Q Was there one time when you were confined to your bed?
A That is right.
[fol. 15] Q Are you still confined to your bed?
A No. Well, how could you say in some instances. I used to suffer quite often with my stomach, and in other words, my illness, like I am up today, I could be in bed tomorrow. It reacts like that.
Q Well, one time you were in bed regularly, weren't you?
A Yes.
Q Were you what they call bedfast?
A Right.
Q You are not bedfast continually, now?
A No, not all the time.
Q And for a while you were confined to your wheelchair all the time, wasn't this?
A Just about.
Q You are not confined all the time to your wheelchair, now, are you?
A No.

Q Do you do it at all, now?
A Yes, sure, I have to.
Q Are you interested in having a housekeeper come along to take care of your home, now, so your daughter can go to work?
A Not, like I have been—
[fol. 16] Q You are not interested in having a housekeeper?
A Not the kind like that sent me.
Q No housekeeper ever takes care of a home as well as the housewife or homemaker.
MR. LEFKOW: I would object. Mr. Genis, I can't see that has any relevance to the case.

MR. GENIS:

Q If the Cook County Department of Public Aid supplies you with a housekeeper, will you permit your daughter to go to work?
A I have permitted her already, but it is too much for her to work.
Q Would you answer my question? If the Cook County Department of—
MR. LEFKOW: I think she answered.

MR. GENIS:

Q If Cook County Department of Public Aid will supply you with a housekeeper, will you permit your daughter to work?
A I have already permitted my daughter to work, but due to the circumstances she can't.
Q If there is somebody to take care of you, then, the circumstances will end, won't it?
A I don't know.
[fol. 17] Q Do you want your daughter to go to work?
A I don't mind.
Q Well, do you want her to work?
MR. LEFKOW: Well, Counsel, I will object to this. Mr. Genis, that is not relevant to the case. This is not something of relevancy to the issues involved in the case. Whether she wants her daughter to go to work has nothing to do with eligibility or for her A.F.D.C.

MR. GENIS: That is where you and I differ, Mr. Lefkow.

MR. GENIS:

Q Did the doctors tell you that they expected that you would be eighty percent mobile to expect that eventually you would be able to walk eight percent as well as a normal person would?

A No.

Q How long does it take to clean your four-room house?

A I really couldn't say because I haven't never timed anyone.

Q Well, what is your best estimate of how long it would take if you were well to take care of your four-room apartment?

A It may take a good day's work according to what [fol. 18] else, if the person just is going to clean up, and not cook, that is one thing, and if they are going to clean up and cook and do two or three other things, that is something different, too.

Q Well, do you think that if you are going to cook and clean your apartment, that it takes all day, seven days a week to do it?

A It wouldn't take me seven days. I don't know about anyone else.

Q How long would you take?

A When I was able, it didn't take me seven days.

Q How long did it take?

A I don't remember.

Q Did you ever have occasion to go to the District Office of the Cook County Department of Public Aid?

A No.

Q What does your daughter do home all day?

A She takes care of me, she cooks, she washes, she irons, and she cleans, she goes to the store, she studies her homework, she does everything that is in the house, everything. I don't go to the store to do any shopping. I can't even carry a chicken home if somebody gave [fol. 19] it to me—and I do mean everything.

Q Well, if your daughter eventually graduates, and I am sure she will, she says she will.—

A She will.

Q From DuSable and then has to go full time to Chicago State College, who is going to take care of you, then?

A I don't know.

Q Isn't it a fact that the housekeeper was at your home while you had her five days a week?

A I might have years ago, the last one I didn't.

Q How many times did you have a housekeeper sent to you or paid for by the Cook County Public Aid?

A I think, three times.

Q Were you satisfied with any of them?

A Not really, and I am not hard to get along with.

Q Do you have any kind of companionship at home outside of your daughter?

A No.

Q Have any friends that come around to keep you company?

A Some associates ever once and a while.

Q What do you mean by "associates"?

[fol. 20] A Because this is different from a friend and associate.

Q You mean they are acquaintances?

A Acquaintances.

Q Do you have many acquaintances that come around and see you?

A No.

Q Do you feel that the companionship of your daughter at home, that is what you need?

A I mean we get along fine, if that is what you mean. I am not craving for any other.

Q When your daughter is away to school are you lonesome for her?

A Sure, I am lonesome.

Q Do you like to have her home all the time except when she goes to school?

A Well, naturally.

Q You would rather that she keep you company than work?

A No, not really.

Q Did you ever discuss with your daughter to have her see if she couldn't obtain some sort of scholarship?

A I though it was too late. I think, we have talked [fol. 21] about it.

Q How do you account for the fact that your daughter did so well in high school, and is doing comparatively very poorly in college?

A Because when she entered college she still had a lot to do, the studies were harder, she still had me to take care of. It was an awful adjustment for her to make. It is an awful lot for her to take care of me.

Q Well, didn't she have to take care of you during the four years she was going to high school?

A Yes, but high school and college is different.

Q Did she take care of you all the time, during the time she was going to high school?

A Most of the time, yes, that is during the time I had a housekeeper once in a while.

Q How about when she was going to grammar school, were you ill?

A I was in the hospital, that is true.

Q And how did she do in grammar school?

A You mean her studies?

Q Yes.

A She did all right, that was easy, also in high school.

[fol. 22] Q Do you think college work is too much for her?

A No, I don't, but I think, it requires, in fact, I know it requires more time and studying.

Q Didn't the Cook County Department of Public Aid suggest that your daughter seek part-time employment?

A I don't know.

Q You don't know?

A They did say something to that effect.

Q Does your daughter have any friends that come to the home?

A She has some associates.

Q How often?

A I don't really, I don't know exactly how often, not two, or three, or four times a week.

Q How often would you say?

A I would say not two, three, or four times a week. Now, I don't know exactly. I don't write that down.

Q Do you get any aid of any kind except what you get from the Cook County Department of Public Aid?

A No.

Q Do you have a bank account?

[fol. 23] MR. LEFKOW: Just answer the question.

THE WITNESS: No.

MR. GENIS:

Q Have any insurance?

A I don't have anything.

Q Do you get any help from any relatives?

A No.

Q Friends?

A No.

Q Charities?

A No.

Q What do you and your daughter do at home when she is not studying or taking care of the house?

A Go to sleep. Sometimes, she takes me for a walk if I am able, and I go out in my chair.

Q Does she have any girlfriends?

A Yes.

Q Do they come around once in a while?

A It's been a long time.

Q Does she have any boyfriends?

A No.

Q Does she know any boys?

A Yes, of course.

Q Do they ever come around the house?

[fol. 24] A Sometimes.

MR. LEFKOW: Mr. Genis, I have to object to that line of questioning because it really bears no relevance to the case except for those things that are relevant, my clients don't care to lay out their lives on the table. Please confine it. Questions of whether she has boyfriends is not relevant if she stated she has no income.

MR. GENIS:

Q The question was what she does with her time?
A She doesn't have any time.

MR. GENIS: There is nothing wrong in having friends, at least I have never considered it wrong. Mrs. Townsend, do you consider it wrong to have friends?

MR. LEFKOW: What I am saying except for those questions you may have that relate to the case, other matters such as some of the others you mentioned are an invasion of privacy which is a right, and all I am saying as their attorney, I wish you would ask questions in such a manner as to respect those rights, that is all I am asking.

MR. GENIS:

Q Your daughter did make—did get a loan for some of her school books, didn't she?
[fol. 25] A Yes.
Q How long has your T.V. been on the blink?
A Since March the 5th, 1966, I believe, it was '66, I don't really remember. Whenever March 5th was on a Sunday, that is when it was.
Q Do you recall the Cook County Department of Public Aid making several appointments for your daughter to come and see them so that they could help her get part-time employment?
A No.
Q If the Cook County Department of Public Aid did supply you at home with housekeeping and nursing care, would your daughter then have time to do part-time employment—work?
A I don't know. It is according to how she has to study. I don't know that.
Q You mean even though she didn't have to do any housekeeping work or nursing work of any kind for you, she would still need all that time to study?
A I don't know how much time she would need to study. You have to ask her.
Q When you go to the hospital in a cab do you go alone?
A Most of the time, sometimes.

[fol. 26] Q Sometimes what?
A I go alone.
Q And sometimes you don't?
A Right.
Q And who goes with you?
A My daughter.
MR. GENIS: Do you have any questions, sir?
MR. BILTON: No questions.

MR. GENIS:

Q You have no income except the grant?
A Yes.
Q How much do you get a month?
A $120.68.
Q A month?
A Yes.
Q $120.68 a month, you get that a month?
A Yes.
Q You get it all at once?
A Yes, all at once.
Q Once a month?
A Yes.
MR. GENIS: I have nothing else.

* * * *

[fol. 27] [Reporter's Certificate to Foregoing Transcript Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68C 2134

LOVERTA ALEXANDER, ET AL., PLAINTIFFS

*vs.*

HAROLD O. SWANK, Director of the Illinois Department of Public Aid, ET AL., DEFENDANTS

The deposition of OMEGA MINOR, called by the Defendant for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Court pertaining to the taking of depositions for the purpose of discovery, taken before ROSE MARY SLOWIK, a notary public within and for the County of Cook and State of Illinois, at 160 North La Salle Street, Room 900, Chicago, Illinois, on the 10th day of September, A.D., 1969.

[fol. 1(a)] PRESENT:

MR. MICHAEL LEFKOW, on behalf of the Plaintiff, Omega Minor;

MR. WILLIAM J. SCOTT, Attorney General, by

MR. BERNARD GENIS, Assistant Attorney General, on behalf of the Defendant, Harold O. Swank, Director of the Illinois Department of Public Aid;

MR. EDWARD V. HANRAHAN, State's Attorney, by

MR. DEAN BILTON, Assistant State's Attorney, on behalf of the Defendant, Cook County Department of Public Aid.

[fol. 2] MR. GENIS: This is the deposition of Omega Minor taken pursuant to notice that I served, as well as an order that was entered by the Court requiring you to come here and to truthfully answer all questions that I may ask of you pertaining to this case.

Do you understand, Miss Minor?
MISS MINOR: Yes.

OMEGA MINOR,

having been first duly sworn on oath, was examined upon oral interrogatories and testified as follows:

EXAMINATION BY MR. GENIS:

Q Miss Minor, for the record, will you please state your name, and will you speak up so we all hear you?
A Omega Minor.
Q Where do you live, Miss Minor?
A 3983 Lake Park.
Q In Chicago?
A Yes.
Q Is that an apartment building?
A Yes, it is a project.
Q And, in what apartment do you live?
[fol. 3] A 108.
Q And do you have a telephone?
A Yes.
Q What is your telephone number?
A 624-0593.
Q And how large an apartment is it?
A A two-bedroom unit.
Q How many rooms altogether?
A Four.
Q And what does the apartment consist of?
A Two bedrooms, one kitchen, one bath, and one living room.
Q And do you live there with your mother?
A Yes, I do.
Q Does anyone else live there?
A No one else.
Q How long have you lived there?
A For about a year and two months.
Q And where did you live before that?
A We lived on 51st and Calumet.
Q And what address?

A 5111 Calumet, 10, in Chicago.
Q And how long did you live there?
A About four years, I suppose.
Q And how big an apartment was that?
[fol. 4] A Same amount of space, four rooms.
Q And did you have a phone number there?
A Yes, but I don't remember what it was.
Q And did you live there with your mother?
A Yes, no one else.
Q No one else. And do you know how much rent you pay where you are now?
A Yes, $70.00 a month plus utilities.
Q That includes utilities?
A No, It doesn't.
Q Now, do you have a Social Security Number?
A Yes.
Q Do you know what it is?
A No, I don't.
Q Do you have it with you?
A No, I don't.
Q Do you remember when you graduated from grammar school, do you remember?
A Yes, I do remember.
Q And when did you graduate from grammar school?
A It was in January of 1963.
Q And what is the name of the grammar school?
A Crispus Attucks.
Q And after you graduated from grammar school, [fol. 5] did you go to high school?
A Yes, I did, DuSable.
Q And when did you start DuSable?
A Let's see, I believe, it was that January, I am not too sure.
Q Well, I suppose the semester was started around February 1st?
A Something like that.
Q Of 1963?
A Yes.
Q And did you go to DuSable continuously?
A Yes, I did.

Q Until you finished?
A That is right.
Q And when did you graduate from DuSable?
A In August 1966.
Q Now, when you went to DuSable High School, did you major in any particular type of work?
A No, I didn't.
Q Did you take secretarial work there?
A Some of it, yes.
Q And what type of work did you take as far as secretarial work was concerned?
A Typing and shorthand and it is business education.
[fol. 6] Q And how long did you take shorthand?
A Well, about a year, I suppose.
Q And how long did you take typing?
A For the same amount of time.
Q And what is the third subject you mentioned?
A It was a business course, I think, it was business, I can't remember.
Q How long did you take that?
A I took the full course for a year.
Q And, did you learn how to type?
A Yes.
Q And did you learn how to take shorthand?
A Yes, I did.
Q Do you still know how to type?
A Yes, I do, but I don't know how to take shorthand.
Q Outside of your regular school work, did you participate in any other activity in high school?
A No, I didn't.
Q Weren't you editor of your school paper?
A Yes, I thought you meant other outside activities in—
Q I mean in school, outside of the classroom?
A No.
[fol. 7] Q You were the editor of your school paper?
A Yes.
Q And before you were editor, you did other things on the school paper?

A Yes, other things like writing something.
Q And how long did you work on the school paper?
A I can't tell you because I don't know.
Q How long were you editor of your school paper?
A About a term or two, I am not too sure.
Q Did you participate in sports?
A No.
Q Were you interested in sports?
A No.
Q How would you say you were as far as a student, poor, good, average, very good?
A I was good and average, sometimes very good in certain subjects.
Q Do you know what your rank was in DuSable when you graduated?
A It was in the top portion.
Q In the top?
A Top portion, I was the valedictorian.
Q In the top portion?
[fol. 8] A That is right.
Q Upper five percent, ten percent, twenty percent, fifty?
A The upper five percent.
Q Did you get some honors?
A I was valedictorian like I said.
Q I am sorry, I didn't hear you.
What does the valedictorian of the class do?
A Well, I gave the graduation speech, the last speech or whatever.
Q I understand, but, do you have to be number one, two, or three in your class to do that?
A That is what I was told.
Q What did you have to do?
A As far as my grades and my attendance was excellent. That is, I suppose, how I got it, they didn't tell me all of that.
Q Did you participate in any other activities in school outside of being on the school newspaper?
A Like what?
Q I don't know.

A No, I told you, no other activities, just the school newspaper and just my school work. That is all, noth-
[fol. 9] ing else.

Q Now, while you were attending DuSable, did you plan on going further in school?

A Yes, I did.

Q And did you discuss that with anyone at DuSable?

A Some of the counselors.

Q And were you advised to look into the possibility of getting a scholarship?

A No, I wasn't.

Q Weren't you advised at DuSable to check into the possibility of trying to get some scholarship?

A At the time I was too late, I mean, they advised, but, it was too late for that, so it was, but I was too late.

Q Did they advise you?

A Yes.

Q And who advised you?

A I don't remember.

Q And how many times were you advised?

A I don't remember that either.

Q Was it more than once?

A I don't know.

Q Did you make any attempt at that time to get a
[fol. 10] scholarship for college or junior college?

A I believe, I did, but I can't say for sure.

Q Did you take any tests for a scholarship?

A I had the ACT, I don't think I took the scholarship test.

Q How did you do on the ACD?

A ACT, I did fine, but I don't remember the scores.

Q Were you advised at that time by the Cook County Department of Public Aid to try to obtain a scholarship?

A I don't think so.

Q Weren't you requested to come down to the District Office to discuss the possibility of getting a scholarship for either junior college or college?

A I don't think so.

Q Did you go down to the District Office to discuss the possibility of trying for a scholarship?

A If I don't think I was not advised, I am sure I don't remember going down there.

Q All right. When did you graduate from DuSable?

A DuSable, I graduated in August of '66, like I told you before.

Q All right. What did you do that summer?

[fol. 11] A I went to school in September. I didn't do anything because summer was just about over.

Q You went to summer school?

A When I graduated in August the summer was just about—August, and I went to school in September. I was in school during the summertime.

Q By the way, the regular graduation is usually around the first of June?

A That is right, June.

Q But, you went to summer school and graduated from summer school?

A That is right.

Q Now, where did you go, then?

A To Southeast Junior College on 87th and South Chicago.

Q And did you enroll in any particular type of a course?

A Yes, I did. You mean the courses that I had or what, or just general courses, it wasn't any—

Q It was just a general course?

A Yes.

Q Did you have any particular objective in mind?

A Yes, I did.

[fol. 12] Q What was that?

A Teacher Education.

Q And did they give you a course on Teacher Education?

A Yes.

Q And that is the course you signed up for?

A Yes, and that is the courses I took, and those are the courses I am taking.

Q And those are the courses you are still taking?

A Yes.

Q Did you discuss with anybody at Southeast Junior College the possibility of a scholarship?

A No, I didn't.

Q Now, at that time when you started Southeast Junior College, how old were you?

A I was seventeen.

Q And were you and your mother on A.D.C. at that time?

A Yes.

Q And eventually, was that closed out as far as you were concerned?

A Yes, it was a few months later.

Q And were you told why?

A They said because I reached the age of eighteen [fol. 13] and I was more or less on my own, and they had to discontinue it.

Q All right, were you then transferred to General Assistance for a while?

A For a short while.

Q And were you told why you were transferred to General Assistance?

A I don't remember.

Q Was it suggested to you at that time either by the school or by the Cook County Department of Public Aid or any of their representatives that you seek part-time employment?

A The school did not suggest anything. The Cook County Department of Public Aid suggested it, but I did not.

Q You did not what?

A I didn't seek employment because of reasons.

Q But, it was suggested to you?

A That is right, only by the Public Aid.

Q Pardon?

A Only by the Public Aid, school didn't.

Q Who suggested it to you there?

A I believe, it was one of my mother's caseworkers. I am not for sure.

Q And did they also suggest to you that they refer [fol. 14] you to the Director of Students at the school to see if you can get part-time employment?

A I think so.

Q Did you?

A Yes, I did.

Q And what did the Director of Students do for you, if anything, relative to part-time employment?

A He asked me what were my hours in school. I told him, and he said if I could come in during, between the classes and make some arrangements to work or something like that.

Q What did you say?

A I said if I had the time and if I had, if I could spare the time from studying or whatever, the class that I would do that.

Q Did you do that?

A No, I did not.

Q And for what reason?

A Because of the fact that I did not have enough time between the classes.

Q How many hours were you taking that first semester?

A I do not remember, most of the classes were one right after the other and I did not have any breaks be-

[fol. 15] tween.

Q Did you go to school five days a week?

A Yes, I do.

Q Morning and afternoon?

A That is right.

Q The first semester?

A That is right.

Q Was there employment available to you after school?

A I don't know.

Q Did you attempt to find out?

A Yes, I did, but I do not remember.

Q How about employment on Saturdays and Sundays?

A I don't work on Sundays.

Q How about Saturdays?

A I was studying on Saturdays, and I was taking care of my mother just like every other day during the week.

Q And how were your grades the first semester?

A They were not the best.

Q What were they, do you remember?
A No, I don't.
Q Well, at the end of your first semester, were you put on probation?
[fol. 16] A I believe, I was. I am not too sure.
Q Do you recall receiving a notice from the Department of Public Aid advising that you were employable and suggesting to you that you come down to discuss the situation with the Department of Public Aid?
A No, no.
Q And do you remember that two different appointments were made for you to do that?
A No.
Q And eventually, were you taken off General Assistance?
A Yes, eventually, yes, very soon, very soon, yes.
Q Did they tell you why?
A Yes.
Q Why?
A They said because they could no longer give me the money when I was suppose to work or something like that. I don't remember all of that either.
Q How about your second semester in school, that would have started in February of 1966, how were your grades, then?
A I can't tell you exactly how my grades were each semester, I can't, now. I am sure you can find the rec-
[fol. 17] ords because I can't tell you exactly.
MR. LEFKOW: Couldn't you take the deposition of the Custodian of Records.
THE WITNESS: I said I can't tell you each semester how I did, what courses I had, how many hours I had, and the grades that I received. I am sure you can get the records from school just like you got that, what you have down here.
MR. LEFKOW: Didn't you take the deposition of the Custodian of Records?
MR. GENIS: Yes.
MR. LEFKOW: Okay.

MR. GENIS:

Q Now, after your first year at DuSable which would bring us, well, let me ask you when does the school year usually end?

A Well, it ends some time in June, the early part.

Q Pardon?

A Early part of June or middle part of June.

Q After your first year ended in June of 1967 and you came to the summer vacation, what did you do? Did you work?

A No, I did not work.

[fol. 18] Q Did you go to summer school?

A No, I didn't.

Q What did you do?

A I studied and took care of my mother.

Q What did you study?

A What I had the previous semester and what I anticipated on taking the next semester.

Q You spent all—

A All summer.

Q All summer—

A Studying?

Q Studying?

A And taking care of my mother.

Q I am interested in the subject?

A Studying what I already had.

Q You re-studied what you had had?

A Yes, that is right.

Q And you were also studying what you were going to have?

A What I anticipated, I couldn't say what I was going to have the next semester.

Q What did you study relative to next semester?

A What I had had before and maybe like if I didn't finish the book, you have the first part of the course [fol. 19] and you have the second part the next semester. Maybe, if you have the same book and like if you stop on Chapter 10, maybe you start 11, the second part. That is what I studied.

Q How many hours a day during the summer of '67 did you spend studying?

A I can't tell you.
Q Give me your best estimate?
A Maybe, I don't know, the good part of the day, most of the day, and see, sometimes in the evening.
Q All right. Then, you started again in September of 1967?
A Yes.
Q Do you remember how your grades were in your second year at school?
A I do not remember.
MR. LEFKOW: I think she already indicated she doesn't remember specific grades, Mr. Genis, you know, and to ask her that question continuously is harrassing, and I would object to it.

MR GENIS:

Q After your second year at DuSable we come to the summer of 1968. What did you do in the summer of 1968?
[fol. 20] A The same thing that I did in the summer of 1967.
Q Which was?
A Only, I went to summer school and I graduated. I studied, I went to summer school and I took care of my mother.
Q You say you went to summer school in the summer of '68?
A Are you speaking of Southeast or DuSable?
Q No. No, I am talking of the summer of 1968, that you were at DuSable?
A No, I just went to, I thought you were speaking of '66, I studied and took care of my mother. I did not go to summer school.
Q Then, you started again in September of 1968 which would be your third year at Southeast?
A That is right.
Q Now, do you remember when you applied for A.D.C.?
A I don't remember exactly when it was.
Q Did you apply for A.D.C.?
A Yes.

Q And what caused you to apply for A.D.C.?
A The funds were low.
[fol. 21] Q Whose funds?
A My mother's funds were very, very low, and money was short and we did not have enough to live on.
Q And who suggested to you that you apply for A.D.C. again?
A My mother and I went to apply ourselves, it didn't have to be suggested.
Q Were you represented by a lawyer?
A I don't remember whether the lawyer came in. He might have been that time, I am not too sure.
Q Were you ever represented by a lawyer?
A Yes.
Q Do you know who it was?
A If it wasn't Mr. Lefkow, I am not too sure who it was. I can't remember these facts from year to year and down to every detail.
MR. LEFKOW: Just try to take your time to answer as accurately as you can.
THE WITNESS: I can't, it was either him or another lawyer, I don't remember.
MR. LEFKOW: I think he is referring to when you filed an application or your mother filed it.
THE WITNESS: Yes, but I don't think he was the [fol. 22] lawyer, I am not too sure.

MR. GENIS:

Q You are not too sure, all right. When did you first meet Mr. Lefkow?
A Oh, my goodness.
MR. LEFKOW: I would object, Mr. Genis, that is not relevant to any determination.
MR. GENIS: She doesn't seem to be able to remember anything.
THE WITNESS: Wait a minute, I remember, my memory is just as good as the next person's.
MR. LEFKOW: I would object to that. I don't that —that is a lawyer client relationship, that does—
MR. GENIS: I am not asking her about the relationship. I haven't asked her a word in relation to that.

MR. LEFKOW: I would say it is. If you can connect it up to the relevancy of the case, that is one thing, but it sounds to me that is just fishing.

MR. GENIS:

Q Did you ever discuss with your mother relative to seeking part-time employment?

A Yes, I did.

Q And what, did you want part-time employment?

A Yes, I did.

[fol. 23] Q And did your mother object to it?

A No, she didn't.

Q What was the result of the discussion?

A The result was that I had to study and I had to take care of her and it is very hard to work and to go to school. I have never done it. I have heard it is very hard, and it is hard enough just to go to school and take care of the house and take care of my mother, and I just didn't think I could do it, In fact, I knew I couldn't do it. It is hard enough, just the other two that I named before.

Q Well, was it your idea that you stay home, or was it your mother's?

A It was not my mother's idea. It was mine because of the facts as I told you before.

Q Well, did your mother suggest to you that you seek outside employment?

A I just told you she did.

Q But, you decided against it?

A It is not the point that I decided against it, it is my mother and I discussed it. You asked if we discussed it. I told you yes. I discussed it with her and she discussed it with me, any way you want to say it. I thought about what I had to do, my obligations at [fol. 24] home and at school. Now, it was too much to have outside employment. It was enough in the home and in school, my goodness.

Q Now, we come to this past summer that has just ended. What did you do this summer, this past summer?

A I studied and took care of my mother. That is all.

Q Do you have an evening school at DuSable?
A I don't know, I never attended.
Q Do you know if they have it?
A I don't know.
Q Now, DuSable is what is known as a junior college, is it not?
A No. You have the schools mixed up, the high school mixed up with the college. Southeast is the college, DuSable is the high school.
Q You are right. Southeast is a junior college, is it not?
A City College.
Q And that is the first two years of college work?
A Yes.
Q And it is commonly called a two-year college, isn't [fol. 25] it?
A That is right.
Q And you are suppose to theoretically finish it in two years?
A Two years.
Q Do you know how many hours of work you need to complete your two year course at Southeast?
A I think it is approximately fifteen hours a semester.
Q Fifteen hours a semester, that would mean sixty hours of credits, is that correct?
A That is correct.
Q And do you know how many you have?
A I have about forty something, I believe.
Q Forty something, and you have now been attending for three years?
A That is correct.
Q And how many years do you anticipate it will take you to finish Southeast?
A Maybe one, I am not too sure.
Q You think it might take you more than one?
A I don't know.
Q You know how many hours you need?
A Well, if it is forty something, I should take maybe [fol. 26] eighteen or something like that, you know, less than twenty to make it sixty.

Q Has Southeast started this year?
A No, it hasn't. It begins Monday.
Q It starts Monday?
A That is right.
Q And you need approximately eighteen to twenty more hours, is that it?
A I believe so.
Q And how many hours do you anticipate taking this semester?
A About fifteen, I think.
Q So, that it will take you approximately one year more to finish?
A That is right.
Q Do you know how many times you have been on probation during the three years that you have been there?
A No, I don't.
Q Do you know what your average is at school?
A No, I don't. I think, it is about a C, maybe less, I don't know.
Q You do need a certain average, and a certain number of hours to meet your work at Southeast, don't you?
[fol. 27] A That is correct.
Q But, you don't know what your average is, and you are not too sure exactly of how many hours you have?
A It is about, like I said, it might be forty something, it is no more than, it might be a little less and the average is basically about a C, it is not higher.
Q Now, assuming that you do finish within a year more, do you contemplate going further on in school?
A Yes, I do.
Q And where do you anticipate going?
A To Chicago State College.
Q And how many more years will you need there?
A The full four years.
Q Four more years?
A That is correct.
Q In other words, you need not only to satisfactorily complete two years of work at the junior college, but

in addition thereto, you need four more years at Chicago State College, is that it?

A Yes, that is correct.

Q Chicago State requires four years of college?

[fol. 28] A Yes, it is a four-year college.

MR. LEFKOW: Your two years would be credited.

THE WITNESS: Then, two years, I suppose.

MR. GENIS:

Q Do you know, young lady?

A No, I do not know.

Q Have you made any attempt?

A No, I haven't because I haven't completed this, and I haven't gotten ready for graduation so, you know in due time I will look into it.

Q That is known as—what is the name of that school?

A Chicago State College. Used to be Chicago Teacher's College.

Q Have you registered yet for this coming year?

A Yes, I have.

Q Tell us what you have registered for?

A Humanities, Speech.

Q Let's take one at a time. How many hours of Humanities?

A Three hours.

Q Go ahead.

A Speech is three hours, Math is four hours.

[fol. 29] Q Go ahead.

A And French is four hours.

Q And, I believe, it is a total of fourteen hours, right?

A That is right.

Q And will you be going every day of the week?

A I suppose so, I am not too sure.

Q You don't know when these courses will be?

A Yes, I know, but I think some adjustments will have to be made.

Q Well, during the three years that you have been going to Southeast have you gone to school every day of the week, excluding Saturdays and Sundays?

A Most of the time, some semesters I have, yes.

Q Well, some semesters you have only taken nine hours, haven't you?

A Yes.

Q That means you only went to school three days a week, Monday, Wednesday and Friday, is that right, and Tuesday and Thursday you did not go to school?

A Yes.

Q Most of the time you have been going to Southeast you have only taken nine hours, isn't that correct?

[fol. 30] A Yes.

Q So, most of the time you have been going to Southeast you have only been going to school three days a week —Just a moment will you tell them not to talk.

MR. LEFKOW: Don't, you will have a chance, Mrs. Townsend.

MR. GENIS:

Q Most of the time you have been only taking nine hours a semester?

A That is right.

Q So, most of the time you have only been going to school three days a week?

A Yes.

Q And what have you been doing Tuesday and Thursday?

A What, the same thing I have been doing on Saturdays and Sundays, studying and taking care of my mother.

Q To be able to complete the course in two years you have to average fifteen hours a semester or better, is that correct?

A That is correct.

Q So, you have not been carrying a full load during the time you have been there?

[fol. 31] A That is right.

Q By that is right, you have not?

A I have not been carrying a full load during the time I have been there.

Q All right. Are you familiar with the fact that during the six semesters that you have been in school, you have been on probation three of the six semesters?

A You said that already, and I already knew the facts, I knew it before you did.

Q I thought you told me earlier that you didn't remember?

A I told you I was on probation. You asked me and I said that I was. I told you I was not sure on the exact amount of times. I actually knew it before you. If it was three times or one time or five times, I knew before you.

Q Is it correct that you were on probation three of the six semesters?

A Yes.

Q Do you know?

MR. LEFKOW: She just told you.

MR. GENIS:

Q Do you know?

* * * *

[fol. 33] Q Do you have lunch at home?

A No, I don't. What do you mean at home, during school days or what?

Q Yes.

A I am at school, I can't be home and at school, too.

Q Well, young lady, if you are taking nine hours of work a semester which is three hours a day—

A That is right.

Q —you always try, don't you, to get these three hours next to each other?

A I try, it doesn't always work out like that.

Q When it does work out, you are only at school for three hours, correct?

A That is correct, but, it never worked out like that.

Q During these past three years have you done anything outside of going to school and outside of taking care of your mother. Have you done any sort of work whatsoever?

A I told you I have not.

Q Do you have any sources of income outside of what your mother receives?

A No.

[fol. 34] A No.
Q Under D.A.?
A Under what?
Q D.A. Disability Assistance?
A No, I don't have any other sources of income.
Q And have you received any sort of income of any kind?
A No, I have not.
Q Relative to clothes?
A No.
Q Or food?
A No.
Q Do you have any relatives?
A Yes.
Q Who are your relatives?
A Relatives.
MR. LEFKOW: I would object to that. Mr. Genis, I don't know what her family—
MR. GENIS: I want to find out if she is receiving assistance.
THE WITNESS: My relatives are poor just like we are, and don't give us anything.

MR. GENIS:

Q How about friends?
[fol. 35] A Friends, you mean associates. No friends, no associates.
Q Do you have anything from charities?
A I have not. My mother has not received anything from anybody.
MR. LEFKOW: Omega, just answer him yes or no.

MR. GENIS:

Q What do you do in the evenings?
A Different evenings I do different things.
Q Well, outside of studying and taking care of your mother?
A It is not much time left, I go to bed.

Q Do you have any girlfriends?
A Yes.

Q Do you ever see them?

A Sometimes.

MR. LEFKOW: I would have to object again to that. Her girlfriends don't have anything to do with this case. I haven't seen any connection between her girlfriends and the case at hand.

MR. GENIS: She said that she spent all her time either taking care of the house or in school or studying and I want to find out on that.

[fol. 36] MR. GENIS:

Q Do you see your friends outside of school?

A Yes.

Q Where do you see them?

A At church.

Q Where else—how often do you go to church?

A Sometimes once a week.

Q On Sunday?

A Yes, that is right.

Q Have you a boyfriend?

A No.

Q Do you ever go out with boys?

A No.

Q Ever go swimming?

A No.

Q Ever watch T.V.?

A No, it is broken.

Q Well, when it wasn't broken?

A Well, naturally.

Q Do you participate in any sport of any kind?

A No, I do not.

Q Does your mother do anything at home relative to taking care of herself or the apartment?

A No, she doesn't.

[fol. 37] Q She doesn't do a thing?

A Like what I mean, you mean like—

Q Does she feed herself?

A Yes, she can feed herself. She does not cook, though.

Q Is she able to dress herself?

A In some things, yes, you know like a dress or something, but nothing difficult.

Q Is she able to undress herself?
A Some things, and some things not.
Q Is she able to do any cooking?
A Some times, very little, like boiling something.
Q Does she do anything relative to keeping the house?
A No, she does not.
Q How about shopping?
A No.
Q Does she ever go out of the house?
A To take a walk when I go with her.
Q When you contemplate going to Chicago State College, you contemplate taking a full course, or only approximately a half course as you are taking, now?
A I contemplate taking a full course.
Q That will be a minimum of fifteen to eighteen [fol. 38] hours a semester?
A That is correct.
Q And that would require you to be there every day, that is Monday through Friday inclusive, would it not?
A Yes, it would.
Q And who is going to take care of your mother, then?
A I do not know.
Q You never registered for emplyoyment anywhere at any time have you?
A No, I have not.
Q Would you take part-time employment if it was available to you?
A I couldn't because of the fact of my other duties.
Q Ever go to a movie?
A No, I don't.
Q What do you do during Christmas vacation.
A I stay at home.
Q Did you ever think about getting work to do at home such as typing?
A No, I hadn't thought about that.
Q Have you done babysitting?
[fol. 39] A No.
Q Have you attempted to get any scholarship loans?
A Yes, I have.

Q Where and when?
A At school, I believe, it was last semester.
Q And who did you see there?
A I saw the man in charge of it. I can't remember his name.
Q What is his title?
A I do not know.
Q And what was the result?
A They said that you had to have so many hours or something like that, and I didn't have the correct amount of hours, and I didn't have the correct grades.
Q You mean your grades were too low?
A That is right.
Q Who do you contemplate is going to take care of your mother if you graduate and become a school teacher?
A I will graduate, and I will become a school teacher, but, I do not know who will take care of my mother.
[fol. 40] Q How old are you, now?
A I am twenty years old.
Q And when will you be twenty-one?
A In December of this year.
MR. GENIS: Do you have any questions?
MR. BILTON: No, I don't.

MR. GENIS:

Q Did you do any typing of any kind at the present time?
A Some.
Q What kind of typing do you do?
A Typing for my school work.
Q When you take notes in school, do you take them in shorthand?
A No, I do not.
Q Have you a typewriter?
A Yes, I have.
Q Does it belong to you?
A Yes, it does.
MR. GENIS: I think that is all. Thank you.

* * * *

[fol. 41] [Reporter's Certificate to Foregoing Transcript Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 5850, October Term, 1970

GEORGIA TOWNSEND, ETC., APPELLANT

*v.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL.

ON CONSIDERATION OF the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

February 22, 1971

SUPREME COURT OF THE UNITED STATES

No. 6000, October Term, 1970

LOVERTA ALEXANDER, ET AL., APPELLANTS

*v.*

HAROLD O. SWANK, ET AL.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

February 22, 1971

# SUPREME COURT OF THE UNITED STATES

Nos. 5850 and 6000, October Term, 1970

GEORGIA TOWNSEND, ETC., APPELLANT

*v.*

HAROLD O. SWANK, Director, Illinois Department of Public Aid, ET AL.

and

LOVERTA ALEXANDER, ET AL., APPELLANTS

*v.*

HAROLD O. SWANK, ET AL.

APPEALS from the United States District Court for the Northern District of Illinois.

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The cases are consolidated and a total of one hour is allotted for oral argument.

February 22, 1971

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OCTOBER TERM, 1970

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LOVERTA ALEXANDER, ET AL., APPELLANTS

v.

HAROLD O. SWANK, ET AL.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

---

# BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

---

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IN THE SUPREME COURT OF THE UNITED STATES

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Nos. 5850 and 6000

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v.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

---

# BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

---

This brief is submitted pursuant to the Court's invitation of December 14, 1970.

## OPINIONS BELOW

The opinion of the single judge district court (Alexander, App. A; Townsend, App. 1-3) is unreported. The opinion of the three-judge district court (Alexander, App. B; Townsend, App. 4-21) is not yet officially reported.

## JURISDICTION

The judgment of the three-judge district court was entered on April 30, 1970, and timely motions to vacate and reconsider were denied on June 12, 1970. The notices of appeal were filed on July 14, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1253.

## QUESTIONS PRESENTED

1. Whether state welfare programs, in order to be eligible for federal matching grants under the Aid to Families with Dependent Children (AFDC) program, must extend aid to all categories of children included within the definition of "dependent child" under Section 406(a) of the Social Security Act, 42 U.S.C. 606(a).

2. Whether the Illinois AFDC program, which provides for aid to children between the ages of 18 and 21 who attend high school or vocational school, but not those who attend a college or university, violates the Equal Protection Clause of the Fourteenth Amendment.

## STATEMENT

The Federal Aid to Families with Dependent Children (AFDC) program, 42 U.S.C. 601 et seq., which is jointly financed by the states and the federal government and operated in each state under a federally-approved plan, provides welfare assistance to needy families with dependent children. This is a class action by two college students and their mothers, seeking to compel Illinois and Cook County welfare officials to resume payment of AFDC benefits which were terminated when the students reached age 18. The benefits were denied under an Illinois statute (Ill. Rev. Stat., 1967, ch. 23, par. 4-1.1) and regulation

(Illinois Public Aid Regulation 150) which permit AFDC payments for only those children, aged 18-21, who are full-time students at a high school or vocational school. Appellants contend that Illinois is required by the Social Security Act to provide assistance to all persons who meet the definition of "dependent child" set forth by Section 406(a)(2) of the Act, 42 U.S.C. 606(a)(2). This definition includes needy persons, 18-21, who are full-time students at a college or university.[1/] Alternatively, appellants argue that, if refusal to provide benefits to college students does not violate the Act, it violates the Equal Protection Clause.

A three-judge district court, convened pursuant to 28 U.S.C. 2281, 2284, granted summary judgment for defendants. Upon examination of the Social Security Act, as well as the legislative history of Section 406

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1/ Section 406(a) provides:

> The term 'dependent child' means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first counsin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college or university, or regularly attending a course of vocational or technical training designated to fit him for gainful employment.

(a)(2) and the several amendments of that section with respect to the age qualification, the court concluded that the states were not required to employ the federal definition of dependent children in their programs. The court, relying upon Dandridge v. Williams, 397 U.S. 471, also held that there was a rational basis for distinguishing between students aged 18-21 who were in high school or vocational school and those who were in college for purposes of providing AFDC benefits. Consequently, it ruled that the Illinois program did not violate the Equal Protection Clause.

## ARGUMENT

### I

### STATES ARE NOT REQUIRED BY THE SOCIAL SECURITY ACT TO PROVIDE AFDC BENEFITS FOR ALL PERSONS WHO MEET FEDERAL ELIGIBILITY REQUIREMENTS

Petitioners contend that Illinois is required to provide AFDC payments to all persons who fit the definition of dependent child set forth in Section 406(a) of the Social Security Act, 42 U.S.C. 606(a), among them needy children between 18 and 21 who attend a college or university. The Act does not, however, impose such a requirement. Section 406 merely indicates the maximum scope of federal financial participation available to state AFDC programs.[2/] The

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2/ The proposed Family Assistant Act of 1970 (HR 16311) would make assistance to individuals under 22 who are in school or college mandatory, both under Part D (Sections 441-449) of the Social Security Act, funds for which would be all federal, and Part E (Sections 451-455), for which the federal government would provide matching funds.

states may make reasonable classifications limiting the persons, within the definition, to whom they will provide AFDC. This interpretation is fully supported by the legislative history of Section 406, which is particularly explicit with respect to the age requirement. And it is reflected by the consistent administration of the AFDC program by the Department of Health, Education and Welfare. See McClelland v. Shapiro, No. 13,627, decided April 20, 1970 (D. Conn.).[3/]

1. The original Social Security Act set sixteen as the maximum age for a dependent child. 49 Stat. 629. The age provision has since several times been liberalized, and each time it was made quite clear in Congress that extension of benefits to the new group of eligibles was optional with the states. In 1939, Section 406(a) was broadened to include needy children "under the age of eighteen, if found by the State agency to be regularly attending school." 53 Stat. 1380. Committee Reports on the measure indicate that it was universally supposed that the amendment imposed no new requirement on the states. The House Report, for example, stated that "[t]he age limit for Federal grants is raised from 16 to 18 * * *. It is

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3/ In McClelland, a three-judge district court upheld Connecticut's limitation of AFDC benefits to 19-year olds who were in secondary schools against basically the same statutory and constitutional claims made by appellants in this case.

estimated that about 100,000 additional children may obtain aid by virtue of this change, provided all States amend their laws accordingly. * * * [T]he amendments are effective only at such time and to the extent that the States match the Federal funds." H.R. Rep. No. 728, 76th Cong., 1st Sess. 28-29 (1939). See also S.Rep. No. 734, 76th Cong., 1st Sess. 29 (1939).

In 1957, federal matching became available for state assistance to all needy children under 18. 70 Stat. 850. But the removal of the school attendance requirement did not signal mandatory inclusion of all needy children 16-18 under AFDC. The change only "would permit Federal sharing," if the state chose to extend the program. S.Rep. No. 2133, 84th Cong., 2d Sess. 30 (1956). Needy children between 18 and 21 who were regularly attending high school or a vocational or technical school were made eligible in 1964. 78 Stat. 1042. It was noted that "[t]he extension of the [Federal matching] program in this manner would be optional with the States." S.Rep. No. 1517, 88th Cong., 2d Sess. 2 (1964); see also, 110 Cong. Rec. 23701 (1964) (statement of Congressman Mills).

Section 406(a) was amended to read as it presently does in 1965. 79 Stat. 422. Once more, the Congress made it plain that it did not intend, by

its change, to alter the established principle that full coverage of all persons for whom matching funds could be obtained was optional with the States. The Senate Report stated:

> Under existing law States, at their option may continue payments to needy children up to the age of 21 in the aid to families with dependent children program, providing they are 'regularly attending a high school * * * or regularly attending a course of vocational or technical training designed to fit him for gainful employment.' The committee added an amendment extending this provision so as to include needy children under 21 who are regularly 'attending a school, college or university.' Federal sharing for this purpose would thus be available to States who implement such a program. [S. Rep. No. 404, Part I, 89th Cong., 1st Sess. 147 (1965)]. 4/

2. HEW's Handbook of Public Assistance Administration, Section IV-3200, states the Department's position on whether the federal eligibility definition is mandatory: "[t]here is no prohibition or requirement with respect to age; however, the cited provisions * * * do define the limits of Federal financial participation with respect to age." Since the onset of the AFDC program, the Department has consistently approved

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4/ The Report did state, as appellants point out (Alexander Br. 8), that this change would bring AFDC provisions "more nearly in line" with those governing the Old Age Survivor and Disability Insurance Program of the Social Security Act, 42 U.S.C. 401, et seq. Under that program, an otherwise eligible child between 18 and 22 who is a full-time student at an educational institution, including a college or university, must receive benefits. But the statement in the Senate Report provides no basis for concluding that the Congress intended to revoke the authority of the states to establish reasonable age limitations on their AFDC programs. Such a radical alteration would unquestionably not have been announced in such an obscure and indirect fashion.

state plans[5] which set a maximum age limit lower than that permitted by Section 406(a). Thus, in 1937, when the maximum was 16, 35 of 39 states with programs set an age requirement below that.

After the 1957 change permitting assistance to all dependents under 18 became effective, only 26 of 53 programs provided aid to all persons who met the federal definition. Another 22 states retained the requirement that dependents age 16 and 17 remain in school. There are presently AFDC programs in 54 jurisdictions. Of these, 46 have extended the maximum permissible age to "under 21." Thirty-eight permit aid to dependents 18-21 who attend a college or university as well as those who attend a high school or vocational or technical school. Eighteen states retain a school attendance requirement for 16 and 17 year olds.[6]

3. States also have discretion with respect to the designation of relatives listed in Section 406(a) with whom a needy child may live and still receive AFDC payments. The original Social Security Act permitted a needy child to receive assistance with Federal

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5/ Section 402, 42 U.S.C. 602, sets certain mandatory conditions which states must meet to the satisfaction of the Department. If the plan is not approved, no matching funds may be provided. In addition to the explicit conditions of Section 404, the Department has traditionally imposed a general requirement of reasonable relationship to the purposes and history of the Act. See Note, "Welfare's Condition X," 76 Yale L.J. 1222 (1967).

6/ Statistics were compiled by the Social and Rehabilitation Service of the Department.

matching under the Title IV program if the child was living with his "father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt." It was pointed out in the Senate that "[a] state will not have to aid every child * * *. It may limit aid to children living with their widowed mother, or it can include children without parents living with near relatives," 79 Cong. Rec. 9269 (1935) (Senator Harrison).

The list of acceptable relatives was expanded in 1956 to include first cousins, nieces, or nephews. Congress reaffirmed the discretion vested in the states to limit the class of relatives with whom a dependent could live and still receive assistance. It explained that the amendment would only "permit Federal participation in assistance to needy children * * * who are living in the homes of first cousins, nieces, or nephews, thereby extending the degree of relationship slightly beyond the present law," S. Rep. No. 2133, 84th Cong., 2d Sess. 30 (1956).

State discretion under Section 406 is, of course, not without limits. In King v. Smith, 392 U.S. 309, this Court held illegal under the Act a state's refusal to provide AFDC payments to children who met all the dependency criteria except that they had a "substitute father." The Court concluded that the state had failed to meet the statutory requirement "that 'aid to families

with dependent children . . . shall be furnished with reasonable prom ess to all eligible individuals.'" 42 U.S.C. 602(a)(10). That Section, in combination with Section 406(a), the Court held, requires, "participating States to furnish aid to families with dependent children who have a parent absent from the home, if such families are in other respects eligible." 392 U.S. at 317.

The language in King v. Smith can be broadly interpreted to support the proposition that States are required to furnish aid to all dependents who fall within the federal definition. No such interpretation, of course, could be squared with the long-standing administrative practice under Section 406(a) or its legislative history. The King decision has a narrower office. The central purpose of the AFDC program is to provide assistance to children deprived of parental support who continue to live with relatives of a certain proximity. While the States have a certain discretion to define the relatives with whom a dependent child may live if he is to receive aid, they may not employ irrational or arbitrary distinctions. Thus a state program which permitted aid to a child living with a first cousin but not with his widowed or abandoned mother, just as a program that aided all persons 12-21 but none under 12, would presumably not be approved by HEW.7/

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7/ HEW had not approved the plan in question and was negotiating with the State regarding the "substitute father" regulation when litigation was commenced.

The purposes of the Act similarly were undermined by the "substitute father" regulation which indulged a "transparent fiction," 392 U.S. at 334, that a man who merely "cohabited" with a child's mother but had no legal duty to support him somehow served the same function as the child's natural father. Thus, King v. Smith, is, at bottom, simply an example of the limiting statutory principle which prevents a state from structuring its program in a patently arbitrary manner that is unrelated to, if not in conflict with, the purposes of the Act.

III

THE DISTINCTION FOR PURPOSES OF AFDC ELIGIBILITY BETWEEN COLLEGE STUDENTS AND VOCATIONAL OR HIGH SCHOOL STUDENTS IS A RATIONAL ONE AND THEREFORE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

Petitioners additionally contend that, even if the states have discretion to establish age limits for AFDC payments, they are without discretion to provide aid to dependents pursuing one type of education rather than another. Further, they argue that the distinction among students violates the Equal Protection Clause.

There is nothing in the Act or its legislative history, however, which suggests that states may not classify students, aged 18-21, on the basis of the type of education they pursue. The only limitation imposed by the Act is that such classifications be

reasonably related to the purposes of the Act. See supra, note 5. For purposes of this discussion, that requirement can be considered together with the requirement imposed by the Equal Protection Clause.

In Dandridge v. Williams, 397 U.S. 471, this Court articulated the standard for determining whether decisions regarding welfare payments violate the Equal Protection Clause.

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78." 397 U.S. at 485. 8/

The classification involved here was reasonable. As the three-judge district court found, a state might rationally conclude that children with the capacity to do college work are more likely to become employable without governmental assistance than children with lesser mental abilities. Cf. McClelland v. Shapiro, supra. Congress apparently made a similar judgment when it extended the scope of the federal AFDC program

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8/ The Court thus rejected the more stringent test, advocated here by petitioners, which requires a compelling state interest to justify discriminatory classifications. See Shapiro v. Thompson, 394 U.S. 618. That case, however, involved the fundamental right to travel. No comparable right is involved here. See McClelland v. Shapiro, supra; Note, Developments in the Law--Equal Protection, 82 Harv. L. Rev. 1065, 1129 (1969).

to include children between the ages of 18 and 21 in high school or vocational school in 1964 without similarly providing matching funds for such children attending a college or university. See S. Rep. No. 1517, 88th Cong., 2d Sess., p. ?. The state also may have been legitimately concerned with the effect on the working poor, whose children are unable to afford college, of providing AFDC to dependent college students. Cf. Dandridge v. Williams, supra, 397 U.S. at 486.

Illinois' program does not conflict with the purposes of the Act. It is true that the Act's goals are not as fully achieved as they might be if money were allocated for college students. But a state, pursuing a reasonable approach, does not run afoul of either the Social Security Act or the Equal Protection Clause by not attempting to solve all its social welfare problems at a single time. See Williamson v. Lee Optical Co., 348 U.S. 483, 488.

## CONCLUSION

For the reasons stated, this case presents no issue warranting plenary consideration by this Court. We, therefore, respectfully submit appellee's motion to affirm should be granted.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~5850~~ 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR,

*Appellants,*

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

## BRIEF FOR APPELLANTS

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 5850

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR,

*Appellants,*

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

# BRIEF FOR APPELLANTS

## OPINIONS BELOW

The memorandum opinion [A. 39] of the single judge court below denying the defendants-appellees' motions to dismiss, granting intervening plaintiffs-appellants' motion to intervene, and granting appellants' motions to convene a three-judge court is officially reported at 314 F. Supp. 1078

(1969). The opinion of the three-judge district court [A. 83] denying all plaintiffs' motions for summary judgment, granting appellees' motions for summary judgment, and dismissing the complaints is officially reported at 314 F. Supp. 1082 (1970). The order denying plaintiffs' motions to vacate the judgement and for reconsideration [A. 103] is unreported.

## JURISDICTION

This is a direct appeal to this court pursuant to 28 U.S.C. Sections 1253 and 2101(b) from the final decision of the three-judge court of the United States District Court for the Northern District of Illinois, Eastern Division, which was convened in compliance with 28 U.S.C. §§ 2281 and 2284.

The court below had jurisdiction pursuant to 28 U.S.C. § 1343(3), 28 U.S.C. § 2201, and 42 U.S.C. § 1983, to grant the requested injunctive relief and to declare invalid an Illinois Public Aid Code statute and a statewide regulation of the Illinois Department of Public Aid (IDPA). The original complaint, Civ. No. 68 C 3124, was filed November 8, 1968. Plaintiffs Georgia Townsend and her daughter Omega Minor moved to intervene in this cause on January 23, 1969.

The single judge court on March 28, 1969, found that plaintiffs had stated a cause of action under 42 U.S.C. §1983, which raised substantial constitutional questions requiring the convening of a three-judge court. The motion to intervene was allowed.

The cases were heard by a three-judge panel on November 29, 1969, on the complaint, intervening complaint, answers and motions for summary judgment. On April 30, 1970, the three-judge court rendered its judgment. It reaffirmed that plaintiffs' complaints stated a cause of action under 42 U.S.C. §1983, found that the suit was properly maintained as a class action in accordance with Rule 23, Federal Rules of Civil Procedure, and found that the named plaintiffs had standing to maintain the action on behalf of the class. Sum-

mary judgment was granted for the defendants in both cases and the complaints were dismissed.

Plaintiffs and intervening plaintiffs filed separate motions to vacate the judgment and reconsider the cause on May 11, 1970. Their motions were denied by the three-judge court on June 12, 1970. Separate notices of appeal to this court were filed on July 14, 1970. The jurisdictional statement of intervening appellants was filed on September 12, 1970.

On February 22, 1971, the Supreme Court granted the motions to proceed in forma pauperis, and noted probable jurisdiction. 39 U.S.L.W. 3359 (No. 5850 and 6000, Feb. 22, 1971).

## QUESTIONS PRESENTED

Plaintiffs are needy dependent children and their mothers (or other responsible relative) who are in all respects eligible to receive Aid to Families with Dependent Children (AFDC) public assistance payments under §§ 401 *et seq.* of the Social Security Act, 42 U.S.C. §§ 601 *et seq.*[1] except for the fact that the child or children attend a college or university instead of a technical or vocational training school.[2] The child who is a college or university student, whether taking an academic or vocational course, is cut off the Illinois welfare rolls at age 18 in spite of the fact that he or she is made eligible to age 21 by federal law, and no aid is available to that child for his or her subsistence needs. This termination of benefits denies the needy children sufficient means with which to meet basic needs and exposes them to extreme hardship and privation if they are to pursue their education at a college or university. Under these circumstances:

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[1] Section numbers will hereafter be referred to in the Social Security Act and not in the United States Code.

[2] Defendant Swank has estimated that 1,000 Illinois children might take advantage of the benefits sought herein at a cost of $1,000,000 divided approximately equally between the federal and state governments.

(1) Does the guarantee of the equal protection of the laws prohibit Illinois from discriminating between classes of equally needy children by denying AFDC welfare assistance to that class of needy children who attend a college or university in pursuit of their education, while granting that assistance to children who attend a technical or vocational school?

(2) Does the guarantee of the equal protection of the laws prohibit Illinois from discriminating between schools at which vocational or technical training is offered, for the purpose of a needy child's eligibility for federal welfare assistance, by denying AFDC to a child pursuing a technical or vocational course of study at a public junior college or university while granting that assistance to a child pursuing the same course of study at a private vocational or technical school?

(3) Do the requirements of due process of law prohibit Illinois from denying AFDC benefits to a needy child pursuing a course of vocational or technical training at a junior college, college or university while granting AFDC benefits to a child pursuing the same course of study at a private vocational or technical school?

(4) Does the Illinois statute, 23 Ill. Rev. Stat. § 4-1.1 (1969), and the Illinois Department of Public Aid Categorical Assistance Manual Regulation §150, which exclude from receipt of AFDC benefits children made eligible by Congress, conflict with federal law and policy which guarantee basic subsistence to age 21 to these children while pursuing their education; and are they invalid because this statute and regulation define dependent children in a manner inconsistent with the Social Security Act and regulations of the Department of Health, Education and Welfare?

## STATUTES AND REGULATIONS INVOLVED

The rights asserted herein arise under Title IV of the Social Security Act of 1935 as amended, 42 U.S.C. Section 601, *et seq.*, under regulations promulgated by the Secretary of Health, Education and Welfare (HEW), and under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The relevant sections of the Act, §§ 401, 402(a)(8), 402(a)(10), 402(a)(15), 402(a)(19), and 406(a), are set forth as Appendix A, *infra* at App. 1a-8a. The following regulations from Part IV of the HEW *Handbook of Public Assistance Administration* (hereinafter HEW Handbook) are set forth in Appendix B, *infra* at App. 9a-18a: Sections G-3200, G-3210, G-3220, G-3240, 3401, 4200, 4210, 4220, 4221, 4222, 4223, 4223.1, 4223.2, and 4223.3.

The state statute drawn in question is Illinois Public Aid Code Section 4-1.1 which is set forth in Appendix C, *infra* at App. 19a. Statewide administrative regulations of the Illinois Department of Public Aid are set forth in Appendix D, *infra* at App. 20a-21a.

## STATEMENT

The suit was brought to declare invalid and enjoin the operation of an Illinois statute and regulation of statewide application excluding from Aid to Families with Dependent Children (AFDC) benefits children made eligible by the federal Social Security Act. Eighteen to twenty-one year old students in attendance at a college or university and otherwise eligible for AFDC benefits are denied such benefits by the state statute and regulation while other students, similarly situated in terms of age, need, and dependency, but in attendance at a high school, vocational, or technical training school are granted these benefits. A permanent injunction was sought to restrain defendants, the State and Cook County Directors of Public Aid, from failing or refusing to make AFDC payments in reliance on the statute and regulation.

Georgia Townsend is the sole support of Omega Minor, her only child. Omega's paternity has never been established and she receives no support from any putative father. Mrs. Townsend is herself a disabled individual and has no income, resources, support, or maintenance other than public assistance disability payments from the Illinois and Cook County Departments of Public Aid as administered by the defendants. Mrs. Townsend received an AFDC grant on behalf of herself and on behalf of her dependent daughter, Omega, from December, 1953, to April, 1960. From April, 1963 to January, 1967, Mrs. Townsend received an Aid to the Disabled[3] grant from the same defendants for herself and an AFDC grant for Omega. The disability grant was based on Mrs. Townsend's disability due to a disease known as systemic lupus erythematosis.[4]

Omega attended the public schools in Chicago and in August, 1966, graduated with honors from Chicago's DuSable High School. While in high school she was an honor student, valedictorian of her class, and editor of the high school newspaper. She planned to continue her education in college. In September, 1966, Omega enrolled as a full-time student at Southeast Junior College[5] in Chicago, Illinois, and undertook a course of study which would lead to the

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[3] Aid to the Disabled is another categorical assistance program under §1151 *et seq.* of the Social Security Act, 42 U.S.C. §1351.

[4] Systemic lupus erythematosis is a form of arthritis affecting all body tissues. There is no cure. Loeb, *Textbook of Medicine* (1967).

[5] Southeast Junior College is one of the 8 tuition free (to city residents) junior colleges of the Chicago Junior College District No. 508, created pursuant to 110 Ill. Rev. Stat., §§ 13-12 through 13-19.10 (1969). The Chicago Junior Colleges are accredited by the North-Central Association of Colleges and Secondary Schools. A wide range of technical, vocational and academic courses of study are offered.

vocation of elementary school teacher and Illinois certification for that position.[6]

In December, 1966, Mrs. Townsend was advised by defendant welfare officials of the Cook County Department of Public Aid that Omega's AFDC grant in the monthly amount of $87.94 was cancelled effective January, 1967, for the stated reason that Omega had become eighteen years of age and was not in attendance at a high school, vocational, or technical training school. At the time, the family's combined monthly disability and AFDC grants amounted to $171.19. In January, 1967, the Aid to the Disabled grant was issued to Mrs. Townsend in the amount of $123.25 and took account only of the needs of Mrs. Townsend. A monthly General Assistance grant of $34.54 was issued to Omega from January, 1967, to May, 1967, then the grant was cancelled. The family has existed since June, 1967, solely on Mrs. Townsend's Aid to the Disabled grant. Reducing the family's income to $123.25 resulted in a 28 per cent net reduction in the family's income. Nevertheless, Omega continued to pursue her studies at Southeast Junior College.

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[6]The various requirements for certification as a public school teacher are set out in Article 21 of the Illinois School Code, 122 Ill. Rev. Stat. § 21-1 *et seq.* (1969). The specific requirements for an elementary certificate are contained in § 21-3:

> § 21-3 Elementary Certificate
>
> An elementary school certificate shall be valid for 4 years for teaching in the kindergarten and lower 9 grades of the common schools. It shall be issued to persons who have graduated from a recognized institution of higher learning with a bachelor's degree and with not fewer than 120 semester hours and with a minimum of 16 semester hours in professional education, including 5 semester hours in student teaching under competent and close supervision. The academic and professional courses offered as a basis of the elementary school certificate shall be courses approved by Superintendent of Public Instruction in consultation with the State Teacher Certification Board. 1961, March 18, Laws 1961, p. 31, § 21-3.

The three-judge court below held that denying AFDC benefits to Omega Minor and this class of needy dependent children was rational. It found that the education of needy dependent children is not so central and overriding a purpose of the Social Security Act as to require Illinois to follow the federal definition of dependent children [A. 91]. As to the equal protection claims, the court upheld the state's contention that the purpose of the state statute to aid the intellectually inferior needy children rather than the intellectually superior needy children, such as intervening plaintiff, to become employable, and the purpose of ensuring fiscal integrity of state welfare programs, were legitimate state interests providing a rational connection between the legislative objectives and the classifications contained in the statute [A. 93]. The court did not discuss intervening appellants' due process claim.

In June 1970, Omega completed her work at Southeast Junior College. She transferred to Chicago State College (formerly Chicago Teachers' College) and commenced her further teacher's preparation there in September, 1970. She still is in attendance there and anticipates graduating in June, 1972. She and her mother are still existing solely on her mother's Aid to the Disabled.[7]

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[7]Mrs. Townsend's monthly Aid to the Disabled grant is composed of the following items and amounts:

| *ITEM* | | *AMOUNT* |
|---|---|---|
| Rent (Chicago Housing Authority) | | $ 70.00 |
| Laundry Allowance | | 1.25 |
| Transportation to medical source (Fantus Clinic, Cook County Hospital) | | 17.40 |
| Medical Diet | | 9.62 |
| Phone | | 4.61 |
| Personal Allowance | | |
| Food | $26.56 | |
| Clothing | 6.38 | |
| Household supplies | 1.60 | |
| Personal essentials | 8.38 | |
| | $42.92 | 42.92 |
| | | $145.80 |

## SUMMARY

The equal protection and due process clauses of the Fourteenth Amendment and the Social Security Act and regulations of the Department of Health, Education and Welfare invalidate an Illinois statute and regulation which arbitrarily, irrationally and in contravention of the purposes and requirements of the Act and regulations deny AFDC benefits to needy dependent children between 18 and 21 attending a college or university while granting benefits to needy dependent children between 18 and 21 attending a vocational or technical school. *See Shapiro v. Thompson*, 394 U.S. 618 (1969); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *King v. Smith*, 392 U.S. 309 (1968); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *California Department of Human Resources Development v. Java*, 39 U.S.L.W. 4491 (U.S. Apr. 26, 1971).

I. The federal AFDC program has a comprehensive scheme of education, work training, and employment to get recipients permanently out of poverty and dependency, but the state statute and regulation absolutely disqualifies

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Dividing Mrs. Townsend's food allowance between the two result in an approximate expenditure of $.15 per meal per person.

The family's income would have been augmented by $98.18 per month if an AFDC allowance were included for Omega.

| | | |
|---|---|---|
| Laundry | | $ 1.25 |
| Personal Allowance | | |
| Food | $32.00 | |
| Clothing | 9.78 | |
| Household Supplies | 1.60 | |
| Personal Essentials | 5.45 | |
| | $48.83 | 48.83 |
| Educational Allowance | | |
| Transportation | $24.20 | |
| Lunches | 9.90 | |
| School Activities | 15.00 | |
| | $49.10 | 49.10 |
| | | $ 98.18 |

many eligible children from benefits needed for subsistence while attending the schools, colleges, and universities which will enable them to get permanently off the welfare rolls and on to the tax rolls.

Repugnant to the equal protection clause is the rationale that denying them AFDC makes them more and sooner employable. This rationale is one rejected by this Court in *Shapiro v. Thompson*, 394 U.S. 618, 637-638 (1969), as being without a rational basis or compelling state interest. The discrimination against children attending college is not justified by employment possibilities. Vocational education does not make them more employable. Special Labor Force Report No. 96, *Jobless Trends of 20 Large Metropolitan Areas*, 16-20 (1968) (U.S. Dept. of Labor, Bureau of Labor Statistics, Reprint No. 2567). Neither is exclusion of college children justified as a reasonable need-determining regulation. Congress has mandated that all student earned income must be disregarded in determining need. Section 402(a)(8)(A)(i). A state purpose to aid the intellectually inferior child with vocational training is unsupported by the record and contrary to defendants' own regulations and other state statutes declaring equal access to education opportunities for all children a paramount state goal. A Congressional determination that equal protection requires furnishing aid to college as well as vocational school children and is necessary as means of solving national problems supersedes the judgment of the State. *See Katzenbach v. Morgan*, 384 U.S. 641 (1966). The principle of *Dandridge v. Williams*, 397 U.S. 471, 481 (1970), that some AFDC must be furnished to all eligible individuals and families is applicable here. Illinois' underinclusive classification cannot be justified as a reasonable allocation of AFDC by absolutely denying benefits to a statutorily entitled class. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970); *Dandridge v. Williams*, 397 U.S. 471, 481, 484 (1970); *King v. Smith*, 392 U.S. 309, 326 (1968).

The statute is not related to fiscal integrity as a child may give up attendance at college and attend a vocational

school. Saving welfare funds cannot justify an otherwise invidious classification. *Shapiro v. Thompson,* 394 U.S. 618, 633 (1969). Restricting educational and employment opportunities of poor children and coercing them into manual jobs is constitutionally impermissible. *Hobson v. Hanson,* 269 F. Supp. 401 (D. D.C. 1967), *aff'd sub nom. Smuck v. Hobson,* 408 F.2d 175 (D.C. Cir. 1969).

The interests of these dependent children require equal protection to assure access to state-created educational institutions. *Brown v. Board of Education,* 347 U.S. 483 493 (1954).

The less onerous alternatives of percentage reducations or maximum grants are available to conserve welfare funds. *Rosado v. Wyman,* 397 U.S. 397, 413 (1970); *Dandridge v. Williams,* 397 U.S. 471, 479-480 (1970).

II. The facts that Illinois and the federal government in 1970 paid $6,415,917 to Illinois public junior colleges to provide vocational and technical training and that Illinois denies AFDC to a welfare child taking vocational or technical training at a junior college establish the patent irrationality and violation of equal protection by a classification which totally excludes junior colleges, colleges and universities as appropriate schools for pursuit of this training. There is no rational basis for or compelling state interest requiring disqualifying children pursuing needed vocational training in these schools and such an invidious distinction cannot be justified on grounds of saving welfare expenditures. *Shapiro v. Thompson,* 394 U.S. 618, 631-633 (1969).

III. The statute and regulation that will provide AFDC and tuition to a welfare child attending a private vocational or technical school but deny these benefits to the same child if he attends a public vocational or technical school if it is labelled a college is so arbitrary and irrational as to violate due process. *See Chastleton Corp. v. Sinclair,* 264 U.S. 543 (1924). Under the Illinois statutes and regulations the determination of an acceptable vocational or technical

school for AFDC purposes is so insurmountable as to violate the due process guarantee that what is in and out of a statute must be reasonably ascertainable. *Bagget v. Bullitt*, 377 U.S. 360, 367 (1964).

IV. In a series of recent cases this Court has struck down state statutes and regulations which conflict with the requirements of the Social Security Act to furnish assistance with reasonable promptness or when due, and which conflict with federally prescribed methods of dealing with welfare problems. *See, e.g., King v. Smith*, 392 U.S. 309, 326-327, 333 (1968); *Lewis v. Martin*, 397 U.S. 552, 559 (1970); *California Department of Human Resources Development v. Java*, 39 U.S.L.W. 4491, 4494-95 (U.S. Apr. 26, 1971). Illinois is precluded from excluding those persons made eligible by Congress as it unduly limits the welfare rolls and channels matching federal grants in a manner not intended by Congress. *King v. Smith*, 392 U.S. 309, 313, 333 n. 34 (1968); *Rosado v. Wyman*, 397 U.S. 397, 421 (1970); *California Dept. of Human Resources Development v. Java*, 39 U.S.L.W. 4491, 4495 (U.S. Apr. 26, 1971). Illinois by participating in the AFDC program is required to comply with the federal standards. The Solicitor General as amicus curiae in *Swank v. Rodriguez*, No. 1269, Oct. Term, 1970 (Brief of the United States at 9) found Illinois had freely chosen to comply with federal standards.

A. The principles underlying statutory interpretation require that the plain meaning of a statute be followed unless it leads to absurd or unreasonable results. *United States v. American Trucking Association*, 310 U.S. 534, 543 (1940). Section 406(a) of the Act plainly makes needy dependent children attending a college eligible for AFDC and contains no language granting discretion or an option to Illinois to limit AFDC to less than all those defined in federal statute. The legal standard for the states is the Act, otherwise the limitations a state might impose and still collect federal money cannot reasonably be ascertained. This is not a maximum grant situation as upheld in *Dandridge v. Williams*, 397 U.S. 471 (1970), but a situation where no

aid is being furnished to an eligible individual. Applicable here is the principle established in *Rosado v. Wyman,* 397 U.S. 397 (1970), that a state cannot avoid the political consequences of a cutback in AFDC benefits for those on the rolls by the device of totally excluding a class of recipients.

B. HEW regulations specify that college children are eligible for AFDC and that the choice of what type of school to attend is to be left to the child and his family. HEW Handbook, Pt. IV, § G-3220 (1965). HEW regulations make education of dependent children a major program emphasis, while others determine that self-support by dependent children is not a major emphasis. HEW has not been able to secure compliance with the Act and its own regulations. However the regulations are not deprived of their validity. HEW's fears that a state will withdraw from the AFDC program does not justify the political expediency of giving federal funds to an invalid state program. *Cooper v. Aaron,* 358 U.S. 1 (1958). The doctrines of acquiescence and re-enactment are not applicable as they apply to regulations and formal interpretations given to legislative enactments. The inconsistency between HEW's regulations and its actual practice preclude the application of the doctrine. *King v. Smith,* 392 U.S. 309, 313 n.6, 333 n.34 (1968); *Koshland v. Helvering,* 298 U.S. 441 (1936); Davis, *Administrative Law,* § 5.06-.10.

C. The legislative history of the definition of "dependent child" manifests that eligibility has been continually expanded to meet rising educational requirements and opportunities. The Act initially granted aid to all needy dependent children under 16 in a participating state. Subsequent amendments enlarged it to age 18 and in the 1964 and 1965 amendments expanded AFDC to 18 to 21 year old children attending a school, college or university or a course of vocational or technical training. The 1964 amendments extended aid to 18 to 21 year old high school, vocational or technical school students and in 1965, college and university students were added. The 1964 and 1965 amend-

ments must be viewed in a block and in relation to similar OASDI[7a] amendments. A contention that these amendments are optional with a state is unjustified in light of purpose and history of the Act. Even if they were optional, a state would be required to grant AFDC to eligible children attending any school described in the Act, if it opted to extend AFDC past age 18. The congressional determination of a national uniform policy for the solution of a national problem of unemployment of dependent children and adults must be accepted by participating states.

Congress has balanced short term versus long term considerations in requiring the states to expand eligibility. The states must accept Congress' judgment and shaping of the general welfare. *Helvering v. Davis,* 301 U.S. 619, 645 (1937). Congress and this Court have been sensitive to taxing limitations of states and have granted them the power to protect their fisc by allowing them to determine standard of need and level of benefits and, additionally, allowed maximum grants. Section 401, *King v. Smith,* 392 U.S. 309, 318-319 (1968); *Rosado v. Wyman,* 397 U.S. 397, 408, 413 (1970); *Dandridge v. Williams,* 397 U.S. 471, 478, 480-481 (1970).

D. Construing the Social Security Act to further its declared purpose to provide for the security of dependent children requires that all provisions be harmonized. A comprehensive federal scheme of education, work training and employability is apparent. Section 402(a)(8)(A)(i) requires a state to disregard all the earned income of a dependent child who is a full time student as an incentive for children to acquire all the education they can. The Work Incentive Program (WIN), §§ 402(a)(15) and (19) and § 430 *et seq.* provide a program for those children over 16 and not students which will assure that the child will enter the labor force and accept employment. By totally excluding college children and colleges, Illinois is frustrating and retarding an important congressional program. *Woolfolk v. Brown,* 2 CCH Pov. L.Rep. ¶ 13,170 (E.D. Va., Apr. 22, 1971).

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[7a] Old Age, Survivors' and Disability Insurance.

## ARGUMENT

### I.

**NEEDY DEPENDENT CHILDREN BETWEEN 18 AND 21 ATTENDING COLLEGE OR A UNIVERSITY ARE DENIED THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT BY THE OPERATION OF ILLINOIS' AFDC CHILD AGE LAW AND REGULATION WHICH GRANT AFDC TO CHILDREN ATTENDING A VOCATIONAL OR TECHNICAL SCHOOL BUT DENY IT TO THOSE ATTENDING A COLLEGE OR UNIVERSITY.**

Equal protection of the laws requires that similarly situated persons not be treated differently by a state without adequate justification. Yet, Illinois has treated college and vocational school students differently, without rational basis and certainly without any compelling governmental interests.

The present test for determining whether the equal protection clause is violated is set forth by Mr. Justice Black, speaking for the majority, in *Williams v. Rhodes*, 393 U.S. 23, 30 (1968):

> "[I]nvidious distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.

The Illinois scheme of granting AFDC benefits to technical and vocational school students while denying them to college and university students fails this test.

### A. The Facts And Circumstances Of The Law Establish That Illinois Welfare Officials Have Violated The Equal Protection Clause.

It is unnecessary to decide for equal protection purposes whether a state that participates in the AFDC program is required to grant benefits to otherwise needy and dependent children between the ages of 18 and 21 who are students pursuing an education. Once a state has undertaken to participate and to provide such an opportunity, it must be made available to all on equal terms. *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

The court below found the undisputed goal of aiding needy children to become employable is a legitimate state interest and upheld the statute [R. 308].

There is no dispute that the Illinois statute creates two classes of dependent children different in only one regard: the type of training school they attend. One class attends a high school, vocational or technical training school and receives AFDC benefits. The other class attends a college or university and receives no AFDC benefits.[8]

The invidious distinction created between a vocational student and a college student is irrational and arbitrary and places an unreasonable burden and restriction on a welfare family whose child attends a college or university in the pursuit of his education. The effect of the classification is to deter the child from entering college and obtaining an

---

[8] In addition, Illinois discriminates under the Act between children in foster homes and those living in the homes of their parent(s) or relatives. Illinois will grant AFDC benefits to a dependent child, defined in § 406(a) and § 408, 42 U.S.C. § 608 (foster care children), who is in attendance at a college or university. What rational basis for granting this aid to a child in a foster home but not to one living in their own or a relatives home is difficult to ascertain. It certainly undermines the mandate to maintain and strengthen family life. See, State of Illinois, Department of Children and Family Services, *Manual on Placement*, Chap. IV, 1-2 (1966).

education, to coerce the child seeking post high school training into low paying and non-academic vocations with high unemployment rates, or, as in the case of Mrs. Townsend and Omega, to impair the health and lower the standard of living to an intolerable level of the parent and her child who, despite the denial of AFDC, seeks a college education.

The defendant welfare officials argued below that this discrimination is not an unjustifiable discrimination [R. 267-272, Memorandum of Defendant Swank in Support of Swank's Answer to Plaintiffs' Motion for Summary Judgment and Swank's Motion for Summary Judgment] because:

> The whole purpose of our statute [Illinois Public Aid Code, 23 Ill. Rev. Stat. §1 *et seq.* (1969)] is to make them [welfare children] employable. The purpose of our statute is not to give them a choice of going to any type of school that they desire or to take any type of courses that they wish at the expense of the taxpayers of the State of Illinois. It is the purpose of Public Aid to try to get the recipients, particularly the young people, employable as soon as possible, so that the taxpayer can be at least partially relieved of the great burden of Public Assistance. [R. 268].[9]

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[9] Appellant welfare families believe that the defendant welfare officials have misconstrued the purpose of the Illinois Public Aid Code. As in the federal law, maintenance and strengthening of family life is the principal consideration. The purposes are stated in 23 Ill. Rev. Stat. § 1-1, (1969), Public Purpose–Aims in Providing Financial Aid and Services:

> SEC. 1-1. PUBLIC PURPOSE–AIMS IN PROVIDING FINANCIAL AID AND SERVICES. The purpose of this Code is to assist in the alleviation and prevention of poverty and thereby to protect and promote the health and welfare of all the people of this State.
>
> To accomplish this purpose, this Code authorizes financial aid and social welfare services for persons in need thereof by reason of unemployment, illness, or other cause depriving them of the means of a livelihood compatible with health and well-being, and provides for the development, use and coordination of all resources in this State, governmental and private.

The discrimination between a vocational school student and a college student is certainly unjustified by the employment possibilities and trends for both types of students. There was no evidence submitted to the court below that vocational education makes a child more employable than college education. Judge Marovitz's reliance on a newspaper article [A. 96] is hardly the evidence upon which a court ought to rely in upholding such an invidious distinction. Data of the United States Department of Labor, Bureau of Labor Statistics reveals that unemployment rates are higher in relatively low-skill and low-paying occupations such as a vocational student might obtain, while white collar jobs traditionally have low rates of unemployment. Special Labor Force Report No. 96, *Jobless Trends on 20 Large Metropolitan Areas*, 16-20 (1968) (U.S. Dept. of Labor, Bureau of Labor Statistics, Reprint No. 2567); see also, Special Labor Force Report No. 122, *Education of Adult Workers: Projections to 1985*, 43-56 (1970) (U.S. Dept. of Labor, Bureau of Labor Statistics, Reprint No. 2685).[10]

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> The Illinois Department of Public Aid shall establish such standards of financial aid and services as will encourage and assist applicants and recipients to maintain a livelihood compatible with health and well-being and to develop their self-reliance and realize their capacities for self-care, self-support, and responsible citizenship.
>
> The maintenance and strengthening of the family unit shall be a principal consideration in the administration of this Code. All public aid policies shall be formulated and administered to achieve this end. (Laws 1967, p. 122.)

Further, "[T]he provisions of this Code shall be liberally construed to effect its objects and purposes." 23 Ill. Rev. Stat. § 1-5 (1969) *Construction.* For Illinois' purpose in encouraging the education of its youth, such as Omega, see Ill Rev. Stat. ch. 122, § 30-15.1; ch. 144, § 1301 (1969).

[10]The data reported in this Bureau of Labor Statistics (BLS) Report (No. 122) sustains the finding of the 1964 Senate Report that "[E]ducation beyond the high school level has become almost a necessity in preparing for work." Sen Rep. No. 1513, 88th Cong., 2d Sess. 9 (1964) (see page 77 of Appellants brief, *infra*). The upgrading of the expectations of employers and their effect on children of the poverty cycle was described by the BLS report as follows:

In this case the defendants are discriminating against AFDC children attending college by revoking their benefits upon the child's 18th birthday. This discrimination is obstensibly justified on the grounds that it will make these children more and sooner employable. This rationale has already been rejected by this Court. In *Shapiro v. Thompson*, 394 U.S. 618, 637-638 (1969), one-year waiting period requirements before a new resident of a state could obtain AFDC were invalidated as being repugnant to the guarantee of the equal protection of the laws and the constitutional right to travel. Pennsylvania advanced that its one-year waiting period was "justified as a means of encouraging new residents to join the labor force promptly." This Court rejected this purpose because "A state purpose to encourage employment provides no rational basis for imposing a one-

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> Along with the general upgrading in the educational attainment of white and Negro workers, particularly the young new entrants to the labor force . . . there is a parallel upgrading in the expectations of employers with respect to the educational qualifications of those they seek to employ. Three conditions support a continuation of this parallel rise in demand for and supply of the better-educated workers. First, the supply is ensured by the increasing output of our ever-expanding educational system. Second, the interest of employers in accumulating personnel with the highest possible educational qualifications can be justified on the ground that such personnel are more readily adapted to changing job requirements, are more easily trained in a variety of tasks, and are generally more adaptable to positions of increasing responsibility. Finally, as the attainment of at least a high school diploma becomes more common among job-seekers, potential employers tend to view such attainment as a sign of minimum requisite competence for performing any job. The high school dropout is regarded as lacking not only the formal education of the graduates, but also the basic skills, attitudes, and motivations needed for adequate job performance. The outcome, except under very tight labor market conditions, is a situation in which the job applicant with limited formal education is not given equal consideration for available jobs, quite apart from the actual job requirements themselves.

Special Labor Force. Report No. 122, *Education of Adult Workers: Projections to 1985* 48 (1970).

year waiting period on new residents only." Similarly, Illinois' purpose to "get the recipient, particularly the young people, employable as soon as possible. . ." does not justify the denial of AFDC to only 18 to 21 year old children attending college or university.

The defendant welfare officials also asserted without evidence "that persons enrolled in vocational training programs are intellectually inferior to those in college." [[A. 95-96] Concurring Opinion of Judge Marovitz]. This was the ground for granting aid to high school, technical and vocational school students over the age of 18:

> The reasonableness of this category is patent since persons over the age of 18 who are still in high school are educationally slow, and persons in vocational schools, generally speaking, are not on the intellectual par with other students of the same age and are less able to presently support themselves. However, persons over the age of 18 and enrolled in college are considered able to go to school and contribute to their support. [R. 196-197, Brief of Defendants David L. Daniel and Mae Withers in Opposition to the Plaintiffs' Motion for Summary Judgment.]

Children attending college are not deprived of AFDC support and their income earned is not considered available to meet their needs. Section 402(a)(8)(A)(i) specifically exempts *all* earned income of a student. In addition, defendants' own regulations expose the lack of merit for this rational. The state's regulations *deny aid* to those "intellectually inferior" students who seek post high school education. Section 1017.2 of the IDPA *Categorical Assistance Manual (CAM)* (Appendix D) sets out the criteria for determining whether his plan for vocational training would be approved by the IDPA. In determining this:

> Special consideration is given to the child's desire for further training *provided* that his *ability, aptitudes* and *school performance* warrants such a vocational plan. §1017.2 IDPA-CAM. (Emphasis added).

The state's regulation makes it clear that it has no intention of paying for the training of "intellectually inferior" students.

While the discriminatory regime imposed by the state statute and regulation is gross and otherwise objectionable standing alone, its relevance to the purpose of the AFDC program is to be measured against the congressionally determined purpose of securing dependent children's education, work training and employability through the AFDC program. Any state purpose or law asserted by defendant welfare officials in conflict with the paramount federal law and policy is invalid. In addition, Illinois has already made the choice of compliance with the governing federal standards and purposes, 23 Ill. Rev. Stat. §§ 12-4.5 and 4-1.4. (1969). This is also the view the Solicitor General expressed as amicus curiae in another Illinois welfare case pending before this Court, *Swank v. Rodriguez*, No. 1269, Oct. Term, 1970. (Brief of the United States at 9). *King v. Smith*, 392 U.S. 309, 333 n. 34 (1968). *Woolfolk v. Brown*, 2 CCH Pov. L.Rep., ¶ 13, 170, (E.D. Va., April 22, 1971).

In contradistinction to the avowed purpose of Illinois to get dependent children into any kind of job and off AFDC benefits, are long standing HEW regulations on federal policy (HEW Handbook, § 4223.2 (1962) ("[S]elf-support is not a major program emphasis for the aged or children. . . ."); § 3401 (1946) (education of dependent children is a major program emphasis); and § G-3220 (1965) (the choice of the type of school to attend and course of training is reserved to the child and his parents) and the 1964, 1965 and 1968 Congressional amendments reassessing national welfare and educational interests. These amendments established an updated educational, work training and employment scheme for AFDC children and their responsible relative.

Further, by amending § 406(a) in 1965 to include children attending a college or university, Congress was making a determination that facts existed which constituted a denial of equal protection to children attending these schools. The

Senate Report found a congressional purpose accomplished by "bringing this provision more nearly in line with the provision of the bill relating to the continuation of a child's benefits under the OASDI system." Sen. Rep. No. 404, 89th Cong., 1st Sess., 147 (1965). Such a Congressional determination of the requirements of equal protection supersedes under the Supremacy Clause a contrary state conclusion.[11] *Katzenbach v. Morgan,* 384 U.S. 641 (1966).

Congress has determined that the evil to be remedied is the recurring cycle of poverty and dependency. A prime cause of dependency is the unemployability of both children and their responsible relative in welfare families because of inadequate education or work training. Congress has decided that the most productive, humane and least expensive method of dealing with this problem is to encourage dependent children to secure enough education in the first place so that they won't have to go through the AFDC work training programs. This is surely logical as it is cheaper to have the children attend public supported educational institutions to prepare for their life's work. Welfare families are encouraged to determine the educational goals of their children and encouraged with government AFDC subsidy to obtain as much of that education as they can acquire. Congress realized that this would require the federal and state governments to expend large sums of money, but also realized that there was no other alternative. Sen. Rep. No. 744, 90th Cong., 1st Sess. (1967). See *Helvering v. Davis,* 301 U.S. 619, 645 (1937).

Illinois agrees that the evils to be remedied are poverty and dependency. It has declared a state policy of educating its residents to the fullest extent possible. The Illinois Higher Education Student Assistance Law, 122 Ill. Rev. Stat. § 30-15.1 (1969) declares:

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[11] *Developments in the Law, Equal Protection,* 82 Harv. L.Rev. 1065 (1969).

**§ 30-15.1 Purpose**

The General Assembly has found and hereby declares that the provision of a higher education for all residents of this State who desire such an education and are properly qualified therefor is important to the welfare and security of this State and Nation, and consequently is an important public purpose; *many qualified students are deterred by financial considerations from completing their education, with a consequent irreparable loss to the State and Nation of talents vital to welfare and security.* The number of qualified persons who desire higher education is increasing rapidly, and the physical facilities, faculties, and staffs of the institutions of higher learning operated by the State will have to be expanded greatly to accommodate such persons, with an attendant sharp increase in the cost of educating such persons. A system of financial assistance of scholarships, grants, and guaranteed loans for qualified residents of college age will enable them to attend qualified institutions of their choice in the State, public or private.
As amended 1967 Aug. 3, Laws, 1967, p. 2644.
(Emphasis added).

To help implement this necessary goal Illinois enacted the Educational Facilities Act, 144 Ill. Rev. Stat. §1301 *et seq.* (1969). The state further declared its purpose as follows:

§1301. DECLARATION OF PURPOSE

It is declared that for the benefit of the people of the State of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions *it is essential that this and future generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills;* that to achieve these ends it is

> of the utmost importance that institutions for higher education within the State be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills; and that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable institutions for higher education in the State to provide the needed additional facilities and structures for the public benefit and good, and in execution of the public policy set forth above. (Emphasis added).

The situation in this case indicates that the Illinois Department of Public Aid, as administered by the defendants, finds as a greater evil the spending of money for public assistance. The Illinois statute and regulation used by defendant to deny AFDC to Omega come before this Court with the admitted and avowed primary purpose of reducing expenditures for welfare. It accomplishes this purpose by furnishing AFDC in a grossly under-inclusive manner. It bars AFDC expenditures to eligible children between ages 18 and 21 attending a college or university while expending AFDC money for the same age children attending a vocational or technical school. Illinois is constitutionally prohibited from allocating its AFDC resources *solely* on the basis of denying welfare benefits to a class declared eligible by Congress. *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Dandridge v. Williams*, 397 U.S. 471 (1970); *Shapiro v. Thompson*, 394 U.S. 618 (1969). In *Shapiro*, this Court required the states to

> . . . do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification. *Id.* at 633.

This rationale invalidates Illinois exclusion of college and university children from AFDC.

The lower court [A. 91-93] assumed that a standard different from that applied in *Shapiro* was to be used

in this case because of this court's decision in *Dandridge v. Williams*, 397 U.S. 471 (1970), thus justifying Illinois fencing out college students from AFDC benefits. *Dandridge*, however, did not make anyone ineligible for assistance declared eligible by Congress. It is undisputed in this case now before the Court that the family is receiving no AFDC benefits, and that they have been made eligible by Congress. Further, *Dandridge* did not say a state might make any welfare classification it wished. That case was brought to challenge the allocation of the State's level of benefits, not its eligibility policies. *Dandridge* cannot be considered, nor does it claim, to have overruled *Shapiro v. Thompson*, 394 U.S. 618 (1969).

The facts and circumstances of the laws involved do not justify the gross under-inclusion caused by the Illinois statute and regulation. They are simply too arbitrary. *Rinaldi v. Yeager*, 384 U.S. 305 (1966).

### B. The State Interests Asserted In Support Of The Classification Denying Needy College Children Aid Are Not Constitutionally Permissible Or Are Not Compelling Governmental Interests.

The lower court upheld the Illinois statute because the "overall purpose of the enactment is to conserve state funds and to promote governmental economy" and because of the importance of needy children becoming employable [A. 93]. We submit these reasons are constitutionally impermissible or not compelling governmental interests. The statute and regulation are only remotely, if at all, related either to fiscal integrity or to employability because any otherwise eligible child can and does receive equal or greater amounts of state funds by giving up his desire for college or university training and settling for alternative vocational or technical training. In many instances, this alternative would be more expensive to the State; for example, a nursing student in a private hospital setting (vocational school) for three years

would receive more state funds than a two-year junior college student in training as a nurse or for employment in data processing, sales management, or other fields. Or the State's policy may be doubly expensive. A child who is deterred from entering a junior college or college program by the lack of AFDC, and who has no opportunity to attend a private vocational school because there are none in proximity or the cost is prohibitive, may end up on welfare as an adult. He or she would then be eligible to take nurse's training through the AFDC Work Incentive Program (WIN).

This Court has held that conserving State funds by totally excluding a class of eligible families and individuals is not a compelling state interest. Neither is it a rational one in accord with the purpose of the AFDC program. There is no justification for the classification of the type Illinois has employed:

> We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. *Shapiro v. Thompson*, 394 U.S. 618, 633 (1969).

Illinois, by its invidious distinction between vocational and college students, has reduced expenditures for both welfare and public education by denying access to indigent children of needed aid to sustain life, thereby effectively denying these children access to public educational institutions which would enable them to lift themselves out of poverty.

Appellants assert that the underlying intention and the effect of the Illinois statute is to restrict and control the opportunities of these poor and dependent children. Judge Marovitz, concurring in the lower court's decision, suggests that "the skills of manual laborers are in short supply" and that the State may "channel persons into those employ-

ment positions for which society has great need" [A. 96]. The State's arbitrary coercion of this one class of children into "manual" jobs is an unreasonable restriction on the precious freedom of choosing one's life work and the right to pursue education in preparation for it.[12] In sum, arbitrarily channeling welfare children into manual jobs is not a constitutionally permissible objective. *Hobson v. Hansen*, 269 F. Supp. 401 (D. D.C. 1967), *aff'd sub nom Smuck v. Hobson*, 408 F.2d 175 (D.C. Cir. 1969).

Omega Minor aspires to be an elementary school teacher in Chicago. In response to HEW guidelines the Chicago Board of Education is integrating its public school faculties. There is a serious shortage of qualified black teachers in all the public schools of Chicago, including those now predominantly white, which are required to have some black teachers. Omega, and many children like her who have

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[12]Plaintiff-appellants maintain that the State should not use its power to deny AFDC benefits so as to coerce the plaintiff class of dependent children, primarily of minority racial and ethnic backgrounds, to engage only in non-academic vocations which command limited wages and are held in lower esteem than many other vocations and professions that require college or university degrees. The State, under Ill. Rev. Stat., ch. 23, § 4-1.1, effectively forces all of these dependent children either to accept "vocational or technical school" training or to forego post-high school training, without consideration of the individual child's aspiration and ability. Judge Marovitz in his concurring opinion [A. 96] agreed with the practical effect of the statute, stating:

> Conversely it may, arguably, be said that there are some persons in college who lack the physical aptitude, coordination, and mechanical ability of vocational students. For instance, a person may be suited by talent and temperament to be an excellent poet or attorney, but not an automobile mechanic or television repairman. In this sense, he could only become economically self-sufficient with a college education, just, as the state contends, another person can only become employable through advanced vocational training.

The practical and political consequences of allowing the state to determine in such an absolute manner the schooling and future employability of its citizens are indeed ominous.

managed to struggle through in spite of the welfare system, are well qualified and are needed to teach and inspire the next generation of children whether black or white.

### C. The Interests of Disadvantaged Dependent College Children Must Have Equal Protection Against The Invidious Discrimination Created By The Illinois Statute and Regulation.

This Court has assured that the rights of the poor and disadvantaged in the areas of voting, criminal procedure, association, and other fundamental interests are equal to those of the wealthy. *Griffin v. Illinois*, 351 U.S. 12 (1956); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Carrington v. Rash*, 380 U.S. 89 (1965); *NAACP v. Button*, 371 U.S. 415 (1963); *cf. Brown v. Board of Education*, 347 U.S. 483 (1954). These dependent children not only deserve, but have great need for similar equal access to State-created institutions of education.

The school Omega attends is a public institution, a creature of the laws of the State of Illinois. Illinois and its subdivisions may not deny equal access to these schools by other laws which impose special hardships on certain groups.

Obtaining an education is the primary focus of childhood and youth in our society. It is so important that it is compulsory for many years of a child's life.[13] A person cannot hope to gain entry to and compete in the employment market without the skills which for most of us are only to be obtained through public or private education. Education

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[13] "[V]oting may be an interest that because of its importance, approaches the level of a right, but education is considered so significant that the State has bypassed the establishment of a right and rendered education a duty. It is a duty imposed in the name of preparing citizens for full participation in a society." Coons, Clune and Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 Cal. L.Rev. 307, 368-69 (1969).

is distinguished in character and importance from other services granted by the State and is of unique importance to an individual in a democratic society. Further, the growth of our free enterprise economic system and the social mobility it furthers are dependent upon free exercise of an individual's right to an education. Here elitist concepts have no place. Here the welfare child must be encouraged to maximize and obtain his individual educational capacity in order to break the bonds of privation and prevent future and unnecessary humiliating dependency upon the federal and state governments. Neither the State nor the children have any interest in an educational and employment caste system. Here the interests of the disadvantaged children and the interests of the State merge.

### D. Less Onerous Alternatives Would Protect The Interests Of Needy Dependent College Students And The Interests Of The State Of Illinois.

The availability to the State of less onerous alternatives invalidates a law that significantly injures an individual. *Shelton v. Tucker*, 364 U.S. 479 (1960) (first amendment); *NAACP v. Button*, 371 U.S. 415 (1963) (first amendment); *Carrington v. Rash*, 380 U.S. 89 (1965) (voting rights); *Green v. County School Board of New Kent County*, 391 U.S. 430 (1968) (education). Appellants contend that these dependent children cannot be deprived of the opportunity to obtain a college education since there are less onerous alternatives that accomplish the State's purpose of conserving State funds without resorting to the drastic measure of totally excluding these children from AFDC.

A number of alternatives that Illinois could follow to conserve state welfare funds have recently been suggested by this Court. See *Rosado v. Wyman*, 397 U.S. 397 (1970) (allowing reduction of per cent of benefits paid or maximum grants); and *Dandridge v. Williams*, 397 U.S. 471 (1970). *Dandridge* involved a challenge to the "validity of a method

[maximum grant regulation] used by Maryland, in the administration of an "aspect of its public welfare program, to reconcile the demands of its needy citizeens with the finite resources available to meet those demaands." This Court held that a state may either under the SSocial Security Act or the equal protection clause place a limit on the amount of funds in the family grant.[14]

The states are not allowed under any off these cases, however, to define the classes of eligible indivividuals or to discriminate amongst them. "So long as somee aid is provided to *all eligible families* and *all eligible children*, the statute itself is not violated." *Dandridge v. Williams*, 397 U.S. 471, 481 (1970) (emphasis added).

State regulation of the standard of need anod the level of benefits is allowed and that is the alternative t to the federal requirements determining eligible individuals a and the proper allocation of federal funds. Illinois need suffer no damage to its fiscal integrity by making AFDC paymeients to all persons eligible under federal law. Illinois may nmaintain the current level of funds it devotes to the AFDCC program by per cent reduction or maximum grants.

Appellants conclude that the State does noot use and has no need to use the denial of AFDC to present a and potential college and university students for the governmmental purposes it has advanced. Thus, even under the traditioonal equal protection test a classification of dependent childrdren according to whether they are in a college or vocational schhool is irrational

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[14]The Court in *Dandridge* quoted *King v. Smith,h*, 392 U.S. 309, 318-19 (1968):

> There is no question that States have consisiderable latitude in allocating their AFDC resources, since eaeach State is free to set its own standard of need and to detetermine the level of benefits by the amount of funds it devotes es to the program.

This is, of course, subject to the limitations of § 40202(a)(23) as interpreted in *Rosado v. Wyman*, 397 U.S. 397 (1970); anand the limitation in § 401, that aid will be furnished "as far as practicticable under the conditions in such State...."

and unconstitutional. *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969).

## II.

## NEEDY DEPENDENT CHILDREN PURSUING VOCATIONAL OR TECHNICAL EDUCATION AT A JUNIOR COLLEGE, COLLEGE OR UNIVERSITY ARE DENIED THE EQUAL PROTECTION OF THE LAWS BY ILLINOIS' CHILD AGE LAW AND REGULATION WHICH EXCLUDES THESE SCHOOLS AS APPROPRIATE FOR VOCATIONAL OR TECHNICAL EDUCATION.

Illinois not only classifies needy dependent children in a manner which violates the equal protection clause, but it also classifies the types of schools a child might attend in an irrational and arbitrary manner violative of the equal protection guarantee by blanket exclusion of junior colleges, colleges, and universities as appropriate schools for the pursuit of vocational or technical education by a welfare child.

In 1970, the Illinois State Board of Vocational Education reimbursed junior colleges providing post secondary vocational programs under the Vocational Education Act of 1963, 20 U.S.C. §§ 1241 *et seq.*, and the Illinois Acceptance Act, 122 Ill. Rev. Stat. §§ 94-98, (1969), a total of $6,415,917. These schools receive a base of $7.50 per credit hour of vocational or technical instruction given, with an additional payment of thirty per cent (30%) of the base for children who are classified as "disadvantaged." Annual Descriptive Report of the Division of Vocational and Technical Education of the State of Illinois, 1970. Children from welfare families are effectively precluded from benefitting from very substantial educational opportunities created by this federal-state program by the defendants' refusal to grant sustenance benefits while the child is learning a skilled trade or vocation.

Illinois pays more than $6 million to provide vocational and technical training at junior colleges but disqualifies

a welfare child if he or she takes that training at a junior college. Most publicly-supported colleges and universities offer training in vocations that have counterparts in private specialized technical schools. For example, most universities offer programs in secretarial skills, sales, management, data processing, nursing, medical technology, radio and television, and hotel management. The course descriptions of the Chicago Junior College catalogue, for example, begin with "Air Conditioning" and end with "Transportation."

Because of this nation's heavy investment in low-cost higher education, students can attend publicly-supported colleges and universities at minimal cost. Students on public assistance must take advantage of these colleges and universities because they cannot pay the cost of private training in specialized vocational schools. Most of Illinois' publicly-supported courses of vocational and technical training are available only through junior colleges, which the Illinois Department of Public Aid has specifically excluded in its definition of vocational or technical schools. This permits only the alternative of private vocational or technical schools which are normally beyond the financial means of the dependent child and his parents.

It is simply inconceivable that Illinois is so short-sighted as to deny vocational and technical training given at junior colleges, colleges, and universities to children who need it so desperately, and when the federal government pays half the cost. There is no rational basis for denying children pursuing this training at these schools, nor did the defendants offer any justification. The defendant welfare officials must do more than showing that the denial of AFDC benefits to children in attendance at these schools saves money. *Shapiro v. Thompson*, 394 U.S. 618, 631-633 (1969).

Judge Marovitz in his concurring opinion noted the discrimination "between persons who pursue the same profession, but in different ways. For example, a girl enrolled in a nurses' training course would be eligible for welfare support, but one attending college and majoring in nursing

would not so qualify." [A. 97]. But he found it a "theoretical imperfection" and did not invalidate the Illinois statute. Measuring the statute against the purposes of the AFDC program reveals that each child's education is to be treated on an individual basis. Sections 402(a)13) and (14) of the Act, and HEW regulations, Handbook, §§ 4260 and 4300(B)(1)(b), interpreting the Act, require each state to have a developed plan for each child receiving assistance, including providing "... for leadership directed toward assuring that ... educational opportunities ... that are generally available to other children are equally available to dependent children." Handbook, § 4300(B)(1)(b). There is no doubt that the Chicago Junior Colleges are a community resource that is available to Omega and other welfare children if they are allowed sustenance benefits while in attendance. Breaking the grip poverty and dependency have long held on welfare families requires attention to the needs of each individual if the job is to be done. Poverty is not a "theoretical" matter. It is a drain on our national resources and our people. *King v. Smith,* 392 U.S. 309, 334 (1968).

As we have stated, the equal protection test previously set forth mandates an examination of the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. The Illinois statute and regulation cannot be viewed in a vacuum. They must be viewed in the context of the federal-state AFDC program. The discussion above shows the following invidious and unjustifiable distinctions:

(1) The State of Illinois and the federal government pay $6,415,917 to junior colleges to provide post secondary vocational and technical training and the Illinois Department of Public Aid denies AFDC to a welfare child taking that training at a junior college.

(2) The Illinois Department of Public Aid will provide AFDC and tuition to a welfare child attending a private vocational or technical school, but denies

these benefits to the same child if he attends a public vocational or technical school if it is labelled a college.

(3) The federal AFDC program has a comprehensive scheme of education, work training, and employment to get recipients permanently out of poverty and dependency, but the Illinois Department of Public Aid denies to many eligible children the benefits necessary to attend the schools, colleges, and universities which will enable them to get permanently off welfare rolls and on to the tax rolls.

(4) The stated purpose of the challenged Illinois statute and regulation is to assist the intellectually inferior child and to deny aid to the intellectually average and superior child, while other state statutes express a purpose to assure to every child equal access to public and private educational institutions.

(5) Illinois and Chicago have a great need for qualified black and minority group teachers, but the Illinois statute and regulation require a financial sacrifice to obtain this profession beyond the endurance of most people.

Appellants wish to make it clear that they are not arguing for increased welfare benefits here. This is not a right to welfare or right to life proposition. But they emphasize that the right to equality of treatment is at issue. The rulings of this Court in *Dandridge v. Williams,* 397 U.S. 471 (1970) and *Rosado v. Wyman,* 397 U.S. 397 (1970), are not challenged. The State of Illinois might get out of the welfare field entirely. But as long as it participates in the AFDC program, it may not impose the invidious distinctions which are the subject matter of this suit. The guarantee of equal protection must be applied, and it must be applied in accordance with the law.

## III.

## ILLINOIS' BLANKET PROHIBITION OF COLLEGES AND UNIVERSITIES FROM CONSIDERATION AS APPROPRIATE VOCATIONAL OR TECHNICAL SCHOOLS VIOLATES THE DUE PROCESS RIGHTS OF NEEDY DEPENDENT CHILDREN PURSUING VOCATIONAL OR TECHNICAL TRAINING AT THESE SCHOOLS.

The statute and regulation prohibiting aid to welfare children who might choose to enroll in a junior college, college, or university deny them access to a substantial source of vocational and technical training and is so arbitrary and irrational that it denies due process of law guaranteed by the Fourteenth Amendment. *Remillard v. Carleson*, 39 U.S.L.W. 2584 (N.D. Cal., March 31, 1971). *Cf. Bagget v. Bullitt*, 377 U.S. 360, 367 (1964).

Many relatively non-academic professions or vocations can be prepared for only at a junior college, college, or university. A child who aspires to become a basketball coach, a public aid caseworker, or an elementary school teacher is required by law to attend a university or college to obtain the necessary training.

The educational realities of our society disclose the irrationality and arbitrariness of the statute and regulation on their face and as applied. See *Chastleton Corp. v. Sinclair*, 264 U.S. 543 (1924) (due process rationality to be judged in light of contemporary circumstances). Illinois law, for example, authorizes school boards "to enter agreements with junior colleges for the purpose of providing advanced vocational training of students in the 11th and 12th grades who desire preparation for a trade." 122 Ill. Rev. Stat. § 10-22.20(a) (1969). Under defendant Swank's regulation, § 150, children over 18 but in the 11th and 12th grades would not be eligible for AFDC benefits if they take advanced vocational training at a junior college, thus depriving them of an opportunity to achieve a high school education with AFDC support to enable them to subsist.

When a welfare child seeks post secondary education, whether he or she receives AFDC while attending a course of study in any of a number of different types of schools depends not on the fact that the courses of training are alike, but on the fact that the places of training are different. Illinois exalts form over substance.[15]

The Illinois statute and regulation at issue do not define what a vocational or technical school are. IDPA-CAM §1017.2 states only that a technical or vocational school must be accredited. By regulation and administrative decision of defendant Swank, junior colleges and colleges which are accredited are excluded from consideration. Private business and vocational schools that might be considered are required by Illinois law to be certified. 144 Ill. Rev. Stat. §140 (1969). How a caseworker charged with administering the Illinois statute and regulations in the concrete situation of a welfare family with a child who wants to pursue a vocation is to decide whether a chosen school is appropriate under the regulations defies imagination. When important and fundamental educational interests of dependent children are at stake, due process requires that the schools that are acceptable be reasonably ascertainable.

In considering what a vocational school is, the defendants may be considered bound by the common dictionary definition of "vocational." *The Random House Dictionary of the English Language* (1967) defines vocational as follows:

> **vo·ca·tion·al**, *adj.* 1. of, pertaining to, or connected with a vocation or occupation: a vocational aptitude; a vocational school. 2. of, pertaining to, or noting instruction or guidance in an occupation or profession chosen as a career or in the choice of a career: a vocational counselor, vocational training.

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[15] The Social Security Act, § 406(a)(2)(B), however, refers to the nature of the training, "*a course of vocational or technical training*," without reference to the place at which that training is obtained. (Emphasis added.)

Omega's pursuit of a career in the teaching profession is clearly within the meaning of vocational training. It is the goal and intent of the person which is determinative, not the particular institution attended.

To interpret vocational or technical school as excluding junior colleges, colleges, or universities as appropriate forums for such schools is so arbitrary and irrational as to violate due process of law.

## IV.

## THE EXCLUSION OF NEEDY DEPENDENT CHILDREN BETWEEN THE AGES OF 18 TO 21 ATTENDING A COLLEGE OR UNIVERSITY BY ILLINOIS' AFDC CHILD AGE LAW AND REGULATION VIOLATES THE SOCIAL SECURITY ACT AND REGULATIONS OF THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE.

The Social Security Act of 1935 established a number of programs to provide for the security of children.[16] Subchapter IV of the Act created a federal-state program to provide public assistance payments to families with needy dependent children deprived of parental support. 49 Stat. 627, as amended, 42 U.S.C. §§ 601-644. In *King v. Smith*, 392 U.S. 309, 316-317 (1968), this Court stated that no state was or is compelled to participate in this program but if it does, as Illinois does, the federal Act requires that the State submit a plan which complies with the Social Security Act and rules and regulations promulgated by the Department of Health, Education and Welfare (HEW).

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[16] See Report of the Committee on Economic Security, *Social Security in America*, "Security for Children," found in House Committee on Ways and Means, Economic Security Act, Hearings on H.R. 4120, 74th Cong. 1st Sess. pp. 47-50 (1935); H.R. Rep. No. 615, 74th Cong., 1st Sess., 9-13 (1935); Sen. Rep. No. 628, 74th Cong., 1st Sess., 16-21 (1935).

In *King*, a mother and her four minor children living in Dallas County, Alabama, were removed from the list of persons eligible to receive Aid to Families with Dependent Children (AFDC) benefits. The denial of benefits was based on Alabama's "substitute father" regulation which held that an "able-bodied man, married or single, is considered a substitute father of all the children of the applicant . . . mother" if he cohabitated with her. Alabama considered it irrelevant whether the substitute father was the actual father, whether the substitute father was legally liable to support the children or whether he did in fact contribute to their support. If there was a "man-in-the-house" the family was automatically excluded from consideration for AFDC. The Smith family was excluded from the welfare rolls because a Mr. Williams visited Mrs. Smith on weekends and had sexual relations with her.

The Smith family sued to enjoin the operation of this Alabama regulation on the grounds that it conflicted with the requirements and policy of the Social Security Act and defined "parent" in a manner inconsistent with the Act and that it denied the family equal protection of the laws. In essence, the family claimed that there was a "parent" absent from the home within the meaning of § 406(a) of the Act. This Court agreed. It found that the protection of dependent children was the paramount goal of the AFDC program, that a "substitute father" with no legal obligation to support the children did not assure the protection Congress had in mind and invalidated the Alabama regulation:

> . . . because it defines "parent" in a manner that is inconsistent with § 406(a) of the Social Security Act. 42 U.S.C. § 606(a). In denying AFDC assistance to appellees on the basis of this invalid regulation, Alabama has breached its federally imposed obligation to furnish "aid to families with dependent children . . . with reasonable promptness to all eligible individuals. . . . 42 U.S.C. § 602(a)(9) (1964 ed., Supp. II). *King v. Smith*, 392 U.S. 309, 333 (1968).

The federally imposed obligation to furnish aid to *all eligible individuals* is based on the "category singled out for welfare assistance by AFDC. . . . the 'dependent child,' who is defined in § 406 of the Act . . . ." and the requirement of § 402(a)(10) that aid be furnished promptly to all eligible individuals. "In combination, these two provisions of the Act clearly require participating states to furnish aid to families with children who have a parent absent from the home, if such families are in other respects eligible. See also, Handbook, Pt. IV, Section 2200(b)(4)." *King v. Smith*, 392 U.S. 309, 317 (1968).

This case now before the Court raises the question of whether a child who met all the requirements of the definition of "dependent children" contained in § 406(a) could be excluded from AFDC by the defendant welfare officials' enforcement of an Illinois statute and regulation defining dependent children in a manner inconsistent with the Social Security Act. Mrs. Townsend and her dependent child, Omega, alleged in their intervening complaint that the defendant state and county welfare officials had breached their federally imposed obligation based on 402(a)(10) and 406(a) to furnish aid to families with dependent children "with reasonable promptness to all eligible individuals. . . ." by removing them in January, 1967, from the list of persons eligible to receive AFDC [A. 27]. Appellants arguments will proceed in light of this Court's decision in *King v. Smith*, 392 U.S. 309 (1968).

Section 406(a) of the Act, 42 U.S.C. § 606(a), defines a dependent child as follows:

> § 406. Definitions
>
> When used in this part–
>
> (a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather,

> stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment; . . .

Looking at Section 406(a), it states that a dependent child means a needy child who meets the qualifications of (1) being deprived of parental support, (2) living with an appropriate relative, (3) being age qualified, and (4) between ages 18 and 21, attending school. Section 406(a)(2) contains the age and school attendance requirement. A child over 18 and under the age of 21 is required by the Act to be a student "regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." The language indicates a clear congresssional purpose to provide assistance to children over age 18 if they are attending school. Appellant Omega Minor qualified as a dependent child within the meaning of the federal statute.

Defendant Swank defines dependent children in a manner inconsistent with the Social Security Act. Illinois Department of Public Aid Categorical Assistance Manual (IDPA-CAM) §150 was enacted by defendant Swank, Director of the Illinois Department of Public Aid, on November 1, 1967, pursuant to rule making power granted by 23 Ill. Rev. Stat., §12-13 (1967). It specifically excludes needy dependent children attending college:

> AGE REQUIREMENTS
>
> *ADC*
>
> Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance

> in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)

It is his administrative interpretation of 23 Ill. Rev. Stat., (1967), § 4-1.1, *Child Age Eligibility*:

> § 4-1.1 Child Age Eligibility:
>
> The child or children must be under age 18, or age 18 or over but under age 21, if in regular attendance in high school or in a vocational or technical training school. "Regular Attendance," as used in this Section, means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status. 1967, April 11, Laws 1967, p. 122, § 4-1.1; 1967, July 31, Laws 1967, p. , S.B. No. 1141, §1.

By specifically excluding college and university children between the ages of 18 to 21, defendant Swank has thrown the Illinois State Plan into conflict with the governing federal law. The statute regulation and state plan are invalid because the federal law makes a child, such as Omega, eligible for AFDC. Illinois' noncompliance has resulted "in limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress." *Rosado v. Wyman*, 397 U.S. 397, 421 (1970); *California Department of Human Resources Development v. Java*, 39 U.S.L.W. 4491, 4495 (U.S. Apr. 26, 1971); *King v. Smith*, 392 U.S. 309, 333 n. 34 (1968).[17]

[17]The supremacy of the Social Security Act over conflicting state law or plan provisions was established in King v. Smith, 392 U.S. 309, 333 n.34 (1968):

> There is of course no question that the Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any

The defendant welfare officials argued in the court below that they might pick and choose those dependent children made eligible by Congress to whom they would provide aid. The lower court agreed with them, finding that, "[T]he words of Section 406(a)(2) do not expressly and unequivocably require states to incorporate the federal definition of dependent children in their own programs," [A. 89]. The Solicitor General of the United States as amicus curiae before this Court, expressed its view that, "Secton 406 merely indicates the maximum scope of federal financial participation available to state AFDC programs," and that HEW has "consistently approved state plans which set a maximum age limit lower than that permitted by Section 406(a)." Brief of the United States 5, 7-8. The Solicitor General, however, has recently expressed the view in another Illinois welfare case that Illinois has made the choice of complying with governing federal standards:

> Like most other states, Illinois has already made the choice of compliance with the governing federal standards, Ill. Code 23-12-4.5; 23-11-8. Injunctive relief directing future compliance with federal standards is thus fully appropriate. Compare, *Rosado*, supra; *California Department of Human Resource Development v. Java*, No. 507, this Term, decided April 26, 1971.

Memorandum for the United States as Amicus Curiae in *Swank v. Rodriguez*, (No. 1269, October Term, 1970). Even if the general position expressed by the Solicitor General in intervening appellants' case were correct, the

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state law or regulation inconsistent with such federal terms and conditions is to that extent invalid. See Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 295, 2 L.Ed. 2d 1313, 1327, 78 S. Ct. 1174 (1958); Oklahoma v. Civil Service Comm'n, 330 U.S. 127, 143 91 L. Ed. 794, 806, 67 S. Ct. 544 (1947). It is equally clear that to the extent HEW has approved any so-called "man-in-the-house" provision which conflicts with § 406(a) of the Social Security Act, 42 U.S.C. § 606(a), such approval is inconsistent with the controlling federal statute.

view of the Solicitor General is that Illinois has waived whatever right it had to exclude eligible persons. See also 23 Ill. Rev. Stat., § 4-1.4, (1967), *Conditional Extension of Coverage.*

The interpretation of the court below and that urged by the Solicitor General on behalf of the government in this cause are contrary to the plain meaning of the federal statute, the administrative interpretation given to the Act by HEW, to the purpose and legislative history of AFDC, and the judicial construction this Court has given to the Social Security Act.

### A. The Plain Meaning Of The Social Security Act Requires That Aid Be Furnished To Needy Dependent Children Between Ages 18 To 21 In Attendance At A College Or University.

The State of Illinois clearly has a duty under Section 402(a)(10) of the Act to furnish aid with reasonable promptness to those individuals declared eligible by the Act. *King v. Smith,* 392 U.S. 309, 317, 333 (1968); *Dandridge v. Williams,* 397 U.S. 471, 481 (1970). Section 406(a) of the Act defines those dependent children to whom aid is to be furnished promptly. This definition section applies to all the sections of the Act contained in Part A of subchapter IV, and the definition section clearly indicates that this is so. That section begins, "When used in this part—." This "part" is "Part A—Aid to Families with Dependent Children," which includes all the requirements of § 402(a), including the requirement of furnishing aid promptly. As this Court noted in *King,* it is the combination of these two sections which mandates that a state must furnish aid to the intervening appellants. *King v. Smith,* 392 U.S. 309, 317 (1968).

The words of the statute itself are the most persuasive evidence of the purpose which the legislature undertook in enacting it. Unless the plain meaning leads to absurd, futile, or unreasonable results, the Court need not look beyond

the words to find the purpose of the Act. *United States v. American Trucking Associations,* 310 U.S. 534, 543 (1940); *United States v. Oregon,* 366 U.S. 643, 648 (1961); *Rosado v. Wyman,* 397 U.S. 397, 412 (1970). Who is willing to say that in today's society it is absurd, futile, or unreasonable for Congress to make provision for the sustenance of children between the ages of 18 to 21 who are pursuing their education at a school, college, or university? The United States Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 1970-1971,* indicates post high school training is necessary for myriad occupations. The conclusion must be that all children who meet the requirements of § 406(a) are eligible.

There is no language in § 406(a), or elsewhere in the Act, that is authority for a state to ignore the provisions of the Act, as Illinois has done, if it feels that it is reasonable to do so. Such an interpretation would mean that Congress was not reasonable in setting federal standards in the original Act or in its subsequent amendments. States are not free to spend federal money provided under the Act in any manner they think reasonable. States must meet the conditions specified in the Act, Section 402(b).

In *King v. Smith,* 392 U.S. 309, 318 (1968), Alabama justified the regulation excluding needy dependent children from AFDC when there was a "substitute father" or "man-in-the-house" because denying these children aid was a "legitimate way of allocating its limited resources available for AFDC assistance, in that it reduces the caseload of its social workers and provides increased benefits to those still eligible for assistance." Two state interests supposedly served by the allocation of AFDC which resulted from the regulation were the discouragement of immorality and illegitimacy. By a similar parity of reasoning, Illinois has justified a *total exclusion* of otherwise eligible college and university students because it will encourage their employability "as soon as possible" and relieve the taxpayer "of the great burden of Public Assistance" [R. 268]. This

Court stated in *King* that "it is simply inconceiveable . . . that Alabama is free to discourage immorality and illegitimacy by the *device of absolute disqualification* of needy children." (Emphasis added.) Alabama could deal with these problems by several different methods under the Act, but the one it had chosen "plainly conflicts with the Act." 392 U.S. at 326-327. Illinois' choice of absolute disqualification of needy dependent children attending a college or university, without even the pretense that their needs are being met, as Alabama was able to put forward with its "substitute father" regulation, or any allowable justification that the regulation is related to need, since all student earned income must be disregarded (§ 402(a)(8)(A)(i)), plainly conflicts with the Act.

The only discretion Congress granted the states was in setting standards for students and the schools a student might attend. This is contained in the second clause of § 406(a)(2)(B), and reads:

> . . . (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and *(as determined by the State in accordance with standards prescribed by the Secretary)* a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. (Emphasis added.)

The limiting of even this small area of discretion by "standards prescribed by the Secretary"[18] is strong evidence of Congress' continuing intent to circumscribe any attempt by the states to limit eligibility by disqualifying the student

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[18] HEW Handbook, Pt. IV, § G-3220 (See Appendix B at 5-7, *infra*) contains the standards required by the Secretary. Standards concerning students are contained in ¶ 3. Students in school part time are considered to be in regular attendance. Other standards relate to denying a "course of vocational or technical training." The states are precluded from arbitrarily limiting attendance at a school, college or university by the requirement that the decision should be left to the individual family (¶ 5).

or the student's school for receipt of AFDC. Congress allowed the states limited discretion in the selection of minimum standards for the schools a student might attend when it amended § 406(a) in 1965 from "as determined in accordance with standards prescribed by the Secretary" to the above "as determined by the State in accordance with standards prescribed by the Secretary." 79 Stat. 422.[19] This is similar to the treatment accorded the term "parent" in *King v. Smith*, 392 U.S. 309, 327 (1968). "Parent" as defined in the Act meant one who is legally obligated to support the dependent child under the laws of the state. This was reaffirmed in *Lewis v. Martin*, 397 U.S. 552, 558-559 (1970). Illinois has a comprehensive scheme of legislation regulating the standards of private and public schools. 122 Ill. Rev. Stat. § 2-3.25 (1969) (public schools regulated by the Superintendent of Public Instruction, "Superintendent"); § 697 (vocational education in public schools regulated by Board of Vocational Education and Rehabilitation); 144 Ill. Rev. Stat. § 122 (1969) (privately operated colleges, junior colleges and universities must obtain Certificate of Approval from the "Superintendent"); § 138 (privately owned business and vocational schools—standards are pro-

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[19]The 1965 amendment to § 406(a) reads:

> ELIGIBILITY OF CHILDREN OVER AGE 18 ATTENDING SCHOOL
>
> Clause (2)(B) of section 406(a) of the Social Security Act is amended by striking out "(as determined in accordance with standards prescribed by the Secretary) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent," and inserting in lieu thereof "(as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university. 79 Stat. 422.

The prescription of minimum standards for the school or course of training is a legitimate interest of the student and the state. Avoidance of some schools may indeed be desirable. *See FTC v. Blackstone College of Law*, 44 F.T.C. 756 (1948) (LLB. obtainable in three days upon payment of additional fee).

mulgated by the "Superintendent"); §189 (public institutions of higher education—regulated by Board of Higher Education).

No option or discretion is granted by the use of the word "or" in:

> (2) who is (A) under the age of eighteen, *or* (B) under the age of twenty-one and . . . a student regularly attending a school . . . .

To interpret "or" to give an option means a state can choose between two courses. It could choose (A) or (B) independent of each other. Such is not the case here. Illinois would not maintain that it could limit AFDC solely to children "under the age of twenty-one and . . . a student regularly attending a school. . . ." All preschool children would be excluded under (B). Such a result would clearly not square with (A) or the stated purpose of the Act to furnish aid to needy dependent children, expressed in § 401. Neither is (B) alone an option to be adopted or not to be adopted to supplement (A). The purpose of (B) is to impose a *school attendance condition* on 18 to 21 year olds that is not placed on children under age 18. Finally (B) is not a grant of discretion to set age levels at 19, 20 or 21 or a grant of discretion to aid students attending certain types of schools but not others. If the states have discretion in these areas there would be no legal standard by which to determine if it was complying with the Act. If the Court upholds the State of Illinois in excluding college children under (B), then it is determining that all of (2) is discretionary with the states. Under such a ruling a state might exclude children over ages 12 or 14 or 16 and claim compliance with the Act and the right to federal money. This is certainly not what Congress intended. Congress intended a uniform national policy on eligibility subject only to the financial ability of the states to aid all those made eligible. The power of the states is to limit the amount of aid the eligibles receive, as was upheld in *Rosado v. Wyman*, 397 U.S. 397 (1970) and *Dandridge v. Williams*, 397 U.S. 471 (1970). The states need no other

power. The legal standard must be and is the Social Security Act itself. And the Act grants AFDC to all children between 18 and 21 if needy, dependent and in attendance at one of the schools or courses of training described in § 406(a)(2)(B).

Section 406(a)(2) is not a provision of mutually exclusive alternatives. It is an integrated and unitary whole designed to provide for the protection of dependent children. The "or" must be read in the conjunctive sense of "and," *i.e.*, aid will be furnished to those under 18 and to those under 21 and over 18 if in school. *United States v. Fisk*, 70 U.S. (3 Wall.) 445, 447 (1865) ("[C]ourts are often compelled to construe '*or*' as meaning '*and*', and again '*and*' as meaning '*or*'".); *In re Rice*, 165 F.2d 617, 619 n. 3 (D.C. Cir. 1947); *Union Starch and Refining Co. v. NLRB*, 186 F.2d 1008, 1014 (7th Cir.), *cert. den.* 342 U.S. 815 (1951).

The court below paid scant attention to the language of § 406(a). It disregarded the mandatory requirement § 402 (a)(10) places on the state as to furnishing aid to those persons described in § 406(a). The court instead relied on § 401 of the Act, which expresses the public purposes of the Act, to find a meaning which would allow the defendants to exclude Omega. The court stated, "Variations among state programs were clearly envisioned as is evidenced by recognition that the purposes of the Act would be carried out 'as far as practicable under the conditions of such state,'" [A. 88]. The court below erred in reading the plain meaning of this statute also. The statute reads as follows:

> § 601. Appropriations
>
> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in such State*, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents

> or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children. (Emphasis added.)

The *"as far as practicable under the conditions of such State"* provision is a clause which follows and modifies "enabling each state to furnish financial assistance and rehabilitation and other services" (Emphasis added.) It refers only to the *amount of aid* that may be furnished a child. It does not refer to the children who will be eligible for the aid. It recognizes that the assistance payment to a child may vary from state to state, depending upon the fiscal resources of each state. See *King v. Smith*, 392 U.S. 309, 318 n. 14 (1968). Variations were indeed recognized, but they were variations in payment from state to state and not variations in the children declared eligible for those payments. It cannot realistically be assumed that Congress in enacting national legislation for the general welfare intended the persons it declared eligible for benefits to have that eligibility taken away by the exclusionary practices of a state. Congress in enacting § 402(a)(10) in 1950 specifically disapproved of the use of this device by the states to conserve their public assistance funds.[20]

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[20]When Congress added § 402(a)(10) to the Act in 1950 and similar provisions in the other categorical programs it was for the purpose of dealing with the fact that many congressionally declared eligible people were not receiving any aid because they were being kept on waiting lists. Sen. Rep. No. 1669, 81st Cong., 1st Sess. 16-17 (1949); H.R. Rep. No. 1300, 81st Cong., 1st Sess. 43 (1949). The Social Security Board's Bureau of Public Assistance policy had been to prefer waiting lists rather than reducing the benefits for distribution to all eligible individuals. Altmeyer, The Formative Years of

A plain reading of the Social Security Act, which requires states to give aid to a federally defined class of recipients, does not require that assistance be furnished beyond what is "practicable" for a state, because a state could lower its benefit level to conform to an AFDC budget "practicable under the conditions in such a state." Section 401; *Rosado v. Wyman*, 397 U.S. 397 (1970); *King v. Smith*, 392 U.S. 309, 318-19 nn. 14-15, 334 (1968); *Dandridge v. Williams*, 397 U.S. 471, 478 (1970).

In *Dandridge*, this court upheld a maximum grant regulation adopted by the State of Maryland. The effect of the regulation was to place a limit on the amount of welfare money ($250) a large family might receive to meet their state-determined needs. The needs of large families often exceeded the $250 maximum. Maryland, by the use of the maximum grant did not, however, exclude any eligible child from receipt of AFDC. This met the requirement of § 402(a)(10) because, "[S]o long as some aid is provided to *all eligible families* and *all eligible individuals*, the statute itself is not violated." *Dandridge v. Williams*, 397 U.S. 471, 481 (1970). Maryland furnished AFDC to all children made eligible by Congress. Illinois does not.

This case is not a maximum grant case as was *Dandridge*. *Dandridge* makes clear that Illinois could, if it wished, adopt a maximum grant scheme, provided it met constitutional tests within the categories of fiscal limitations chosen. 397 U.S. 471, 482. *Dandridge* also makes clear that Illinois cannot exclude eligible families and eligible individuals from some receipt of AFDC. If, arguendo, Illinois imposed a maximum grant of $1 on children between the ages of 18 to 21 attending school, they would still *be eligible* for that

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Social Security 60 (1966). Congress rejected this approach in enacting § 402(a)(10). The House Report stated:

> Available funds should be used for the benefit of all persons who meet the conditions of eligibility, even if the amount of assistance granted to those already on the rolls must be reduced. H.R. Rep. No. 1300, 81st Cong., 1st Sess. 43 (1949).

$1 and income exclusions, medical, and other care and training benefits under the Social Security Act. *Rosado v. Wyman*, 397 U.S. 397, 413 (1970). Illinois has avoided facing the political consequences other states have had to face by cutting recipients grants assuming it wants to maintain a constant state welfare budget by not aiding children attending a college or university. By excluding these children Illinois is "limiting the welfare rolls unduly and thus channeling the matching federal grants in a way not intended by Congress." 397 U.S. 397, 421.

A further misallocation of federal funds and additional burden on welfare families results from Illinois exclusion of these children. The income exclusion provision of § 402(a)(8)(A)(i) prevents any earned income of a student from being budgeted against the family's total need. In Illinois an otherwise eligible child such as Omega attending college and earning income will *reduce* the amount of AFDC the parent or relative and siblings receive *because he or she is not eligible* for AFDC. It is clear that Congress never intended this to happen in enacting § 402(a)(8)(A)(i). Illinois is not required to adopt the federal program, but once done, it must apply the federal standards. It cannot adopt the program and then exclude certain eligible children. Neither can it adopt the program in piece meal fashion.

As a matter of statutory and case analysis, the lower court's judgment must be rejected as deficient for failing to come to grips with the words of § 406(a), the intent that they apply throughout the AFDC title, their relation to § 402(a)(10) and other provisions of the Act as interpreted by this Court in *King v. Smith*, 392 U.S. 309 (1968), and the practical and political consequences flowing from Illinois' failure to furnish aid to all eligible families and all eligible individuals.

**B. HEW Regulations Require Illinois To Furnish AFDC To Needy Dependent 18 To 21 Year Old College Children.**

The Department of Health, Education and Welfare, the administrative agency responsible for overseeing compliance of the states with the Social Security Act and regulations issued pursuant thereto, found in HEW's Handbook, Part IV, section G-3200 *et seq.*, issued October 11, 1965, (Text at Appendix B) interpreted the Act to require aid to be furnished to children receiving public assistance who wish to attend college. Section G-3220 states in relevant part:

> A student must be in regular attendance in a school, including elementary grades, high school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. Those who are attending school, or taking a course of vocational or technical training, on a part-time basis are considered to be in regular attendance.
>
> * * * * *
>
> As is customary with families not receiving public assistance, the decision as to the course of study or training to be taken should be left to the youth and his parents. This does not preclude the recommendations of educational authorities as to the program best suited to the youth's capacities. Within the age limit set by the State, there should be a choice of attending a school, college or university or taking a course of vocational or technical training for gainful employment.

The regulation precludes Illinois' total exclusion of college and university children from AFDC benefits. This is emphasized by the statement in the regulation that the regulation does not intend to "*preclude* the recommendations of educational authorities as to the program best suited to the youth's capacities." (Emphasis added.) There is nothing in the regulation which indicates that Illinois may choose to

aid vocational or technical school students and totally exclude college or university students. The statement that the decision as to the course of study or training is to be left to the youth and his parents militates strongly against such a construction. *Remillard v. Carleson,* 39 U.S.L.W. 2584 (N.D. Cal., March 31, 1971) (three-judge federal district court invalidated as inconsistent with HEW regulations California's regulation totally excluding families of U.S. servicemen from AFDC because a parent was not continually absent from home.)

These regulations, issued shortly after the 1965 redefinition of dependent child in § 406(a) interpreted the congressional mandate to preclude defendant welfare officials' exclusion of Omega. The position of the United States expressed in its amicus curiae brief before this Court is not consistent with HEW's Handbook, §§ G-3200, G-3220 and G-3240 discussed above. The United States claims that the states "may make reasonable classifications limiting the persons, within their definition to whom they will provide AFDC." (Brief of the United States at 5.)

Recently, HEW has adopted general provisions regarding coverage and eligibility in financial assistance programs. Title 45 C.F.R., § 233.10 (Supp. 1971). Section 233.10(a)(1)(i) and (ii) announce:

> (i) States have substantial latitude and corresponding responsibility for determining the coverage, nature, and scope of their public assistance programs. Although the public assistance titles define the coverage in which the federal government will participate financially, a state may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.
>
> (ii) The group selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis and must not result in inequitable treatment of individuals or groups in light of the provisions and

purposes of the public assistance titles of the Social Security Act.

At first glance these general statements may appear to support the position of the Illinois welfare officials that they may exclude college students. However, this regulation is not authority for exclusion of persons declared eligible by Congress, and if it was it would be invalid as being inconsistent with the Social Security Act. The regulation itself notes that a State may not impose any eligibility condition that is prohibited under the Social Security Act "or result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act." In sum, these regulations are no authority for Illinois to exclude college and university students, otherwise eligible, from AFDC benefits. Such an exclusion is both arbitrary and unreasonable in light of the congressional definition of "dependent children" and the purposes of the public assistance titles.

In addition, the interpretation advanced by the court below and the United States that the education of dependent children is not the most central and overriding purpose of the Act is inconsistent with long standing HEW regulations which provide for the economic security of needy dependent children. HEW Handbook, §§ 3400, 3401. Section 3401 prescribes the education of a child as one of the main purposes of the aid to dependent children program:

*Purpose of Aid to Dependent Children*

Aid to dependent children is an essential part of a broad social plan of public services, including *education*, health, welfare, and the social insurances, that the Nation is progressively developing to insure its children opportunity to:

1. Grow up in a setting of their own family relationships;
2. Have the economic support and services they need for health and development;
3. Receive an *education* that will help them realize their capacities; and

4. Share in the life of neighborhood and community.

(App. 12a-13a) (Emphasis added.)

It goes without saying that the amount of education necessary to succeed in life varies with the particular conditions of a society. What is clear is that Congress and HEW have made the determination that college or university education may well be essential to a child's welfare, and have accordingly made provision for it.

Additional HEW regulations adopted after the 1956 and 1962 amendments to enforce the mandate to maintain and strengthen life established the right of a family to choose the type of education their children will pursue. HEW Handbook § 4223.1, *Strengthening Family Life* provides in part:

> Families have the right and the responsibility to provide for adequate health care, *education* and vocational training in accordance with the capacities of the children; and to provide further participation in the community life. (App. 18a)

HEW Handbook Pt. IV § 4223.2 makes it clear that *"self-support is not a major program emphasis for the aged or children. . . ."* (emphasis added) (App. 18a). The *education* of a child is, however, a major and essential program emphasis.[21] See also, § 402(a)(8)(A) (student income exclusion). These regulations are hardly support for the state's position that a child over 18 attending a college or university should go out and get a job while a child attending a vocational or technical school need not, or for

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[21] Under Illinois law the education of children is a parental responsibility. 68 Ill. Rev. Stats., §102(b), (1969). The education of a child is considered so important that in the event of a divorce between the parents, Illinois law gives the divorce courts jurisdiction to order a parent to make payments for the support of a child's education beyond the child's age of majority. 40 Ill. Rev. Stat. § 19 (1969). See also, *Roe v. Doe*, 39 U.S.L.W. 2533 (N.Y. Sup. Ct., Mar. 16, 1971).

the view of the court below and the government who advocate that the Social Security Act and HEW regulations do not mean what they say.

The position urged by the government also fails to square with this Court's decision in *King v. Smith*, 392 U.S. 309 (1968). In its brief (page 10) the government claimed that "the language in *King v. Smith* can be broadly interpreted to support the proposition that the states are required to furnish aid to all dependents who fall within the federal definition. No such interpretation, of course, could be squared with the long standing administrative practice under § 406(a) or its legislative history." The brief argues that the central purpose of the AFDC program is "to provide assistance to children deprived of parental support who continue to live with relatives of a certain proximity." The government theorizes on whether a state can define relatives at its discretion and ignores that the main goal is to provide aid to the dependent child. *King v. Smith*, 392 U.S. 309 (1968).

Congress meant to protect families without a breadwinner. But a breadwinner supplies more than bread to children under his care, and children need more than just daily bread.[22] The provision for a child's education is the most important function and focus of childhood, and one of the greatest responsibilities of a parent. It is so important that it is compulsory for many years of a child's life. Congress had a higher goal in mind than providing for the mere physical existence of dependent children.

The government admits that the Department of Health, Education and Welfare has been unable or unwilling to secure the states' compliance with the Social Security Act or the regulations of HEW on dependent children age eligibility. At pages 7-8 of its brief, the government confessed, "Since the onset of the AFDC program, the Department has consistently approved state plans which set a maximum age lower than that permitted by § 406(a)." The reason for this

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[22] Matthew 4:4 ("Man shall not live by bread alone. . . .")

is given at pages 4-5 of its brief as the principle that "states may make reasonable classifications limiting the persons, within the definition, to whom they will provide AFDC." The justification for the principle is sought in the legislative history but grounded in "the consistent administration of the AFDC program by the Department of Health, Education and Welfare."

HEW has had a consistent practice of failing to honor the requirements mandated by the Social Security Act and its own regulations. HEW has approved state plans submitted by Texas and Missouri which required that AFDC benefits be terminated upon a child reaching age 14.[23] If anything at all is clear from the legislative history it is that there never was any congressional approval for limiting AFDC to less than all children under age 16. What the government would do is raise the long standing emasculation of the Social Security Act by HEW to a status of legitimacy by HEW's own wrongdoing. Appellants assert that on this point the government is plainly wrong, and that this Court has not and should not countenance purloining of federal funds by the states with the assist of HEW. *King v. Smith,* 392 U.S. 309, 333 (1968); *Rosado v. Wyman,* 397 U.S. 397, 420-421 (1970); *California Department of Human Resources Development v. Java,* 39 U.S.L.W. 4491, 4495 (U.S. Apr. 26, 1971); *Dandridge v. Williams,* 397 U.S. 471, 512-513 (1970) (Marshall, J. dissenting).

[23]Texas maintained an age requirement of "under 14 years" from the time it entered the AFDC program until 1964 when it moved the age up to "under 16, children 14 and 15 years of age must be attending school." Missouri entered the AFDC program with an age requirement of "under 16 years of age," but in 1946 reduced eligibility by changing to "under 14 years of age; may be extended to children age 14 and 15 if regularly attending school." Report, *Age as An Eligibility Factor in Aid to Families With Dependent Children,* Social and Rehabilitation Service, Assistance Payment Administration, Division of Program Evaluation, Program Characteristics Branch, January 13, 1971. (Report materials taken from Characteristics of State Public Assistance Plans: General Provisions–Eligibility, Assistance, Administration, June 1, 1970).

HEW's failure in this area is accepted by the government and the court below on what amounts to the doctrines of acquiescence and reenactment—that Congress has approved the consistent administration of the AFDC program by HEW by not altering the administration and by its amendments to § 406(a). It is readily apparent however, that HEW has not met the formal requirements of the doctrines. *See* Davis, *Administrative Law*, §§ 5.06-.10. The doctrines traditionally apply only to the regulations and formal interpretations which an administrative agency has given to a legislative enactment, and not the agency's actual practice. A vital inconsistency exists between HEW's interpretation in § G-3220 that the choice of school and training is to be left up to the individual family and its approval of state plans that deny these rights to poor families. Also the strong policy views in favor of supporting the congressionally determined scheme of education, work training and employability which grants AFDC to children in Omega's position necessitates the rejection of the doctrines of acquiescence and reenactment as a defense to HEW's tolerance of illegal state age eligibility requirements. *See King v. Smith*, 392 U.S. 309, 313 n.6 (1968); cf. *Koshland v. Helvering*, 298 U.S. 441 (1936); Davis, *Administrative Law*, § 5.06.

HEW's failure to enforce the Social Security Act and its own regulations has denied AFDC to Omega and thousands of Illinois children. HEW's failure, however, does not deprive the regulations of their validity or relieve Illinois of its duty to comply. The nub of HEW's failure is its fear that if it insists upon full compliance with the law a state might retaliate by withdrawing from the federal AFDC program. That such a result might in fact occur is not a legal justification for approving a statutorily and constitutionally deficient state plan. As Judge Marovitz held in his single judge court opinion in this case [A. 40], "[T]he executive branch cannot validate a welfare plan promulgated under an unconstitutional state statute and regulation," *Alexander v. Swank*, 314 F. Supp. 1078, 1081 (1969); *see also Cooper v. Aaron*, 358 U.S. 1 (1958) (political expediency does not jus-

tify denying a child's constitutional right to equal educational opportunity); *Rosado v. Wyman,* 397 U.S. 397, 426 (1970) (Douglas, J., concurring); *Dandridge v. Williams,* 397 U.S. 471, 516 (1970) (Marshall, J., dissenting); *Shapiro v. Thompson,* 394 U.S. 618, 641 (1969); Note, *Federal Judicial Review of State Welfare Practices,* 67 Colum. L. Rev. 84 (1967).

By failing to enforce the Act and its own regualtions HEW has squandered a good part of this nation's greatest natural resource—its people and their individual potentials and capabilities. HEW has funded a state supported educational and employment caste system. If an Illinois child's mother is poor and his father has left, the policies of the state and HEW assure that this child will be relegated to doing vocational work or less, perhaps another generation on welfare. In the ghetto areas of Chicago and other major cities many children who have come up knowing only public assistance have demonstrated the desire and capability to do college work, and have overcome obstacles to achieve that goal. There are enough hardships and handicaps for these children to face without the additional hardship of the denial of that aid which would enable them to keep body and soul together while struggling to get the education they need to get far out of poverty and the welfare system. There is no justification to continue the maladministration of the Social Security Act. The failure has cost this nation heavily. The correction must be made or the cost in the future will be even greater. *See King v. Smith,* 392 U.S. 309, 334 (1968).

The 1964, 1965 and 1968 amendments to the Act providing for AFDC benefits for 18 to 21 year old students, providing for a total disregard to their income, and providing a work incentive program for dependent children over the age of 16 not attending school make it clear that Congress has neither acquiesced nor approved the denial of AFDC benefits to college and university students. If anything, Congress has been critical of HEW for failing to insure that the

administration of the Act is in accord with the intent of Congress.[24]

### C. The Legislative History Of The Congressional Definition Of Dependent Child Mandates That AFDC Be Furnished To Needy Dependent College Students Between The Ages Of 18 To 21.

The federal definition of dependent child for the AFDC program is contained in § 406(a) of the Social Security Act, which presently reads as follows:

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[24]The summary in the Senate Report accompanying the 1968 amendments capsulized the Senate's dismay over the administration of the Act by HEW and the Senate's demand that HEW carry out the intent of Congress:

> (k) *Summary*
>
> The committee recognizes that the bill would require the States to take on new and expensive tasks. Yet, if the job is to be done—if the number of families on AFDC is to be kept to the minimum—these new activities must begin in earnest. The Federal Government, which is the main financial support for the program, must be assured that the States carry out the intent of the Congress when taking on the new and expanded functions which will be required of them.
>
> The bill provides adequate Federal financial support for these expanded functions. It is estimated that by July 1, 1972, a cumulative 5-year total of $2,735 million will have been spent by the Federal Government on these functions. At the same time it is estimated that the new provisions will mean that fewer children will be receiving aid in that year than if the law were continued in its present form.
>
> Moreover, the committee intends that the Department of Health, Education, and Welfare make changes in its administrative directives under existing provisions of law which will be appropriate under the new provisions added by the bill. Specifically, the committee intends that the Department interpret its authority under present law to prescribe methods of administration which "are found by the Secretary to be necessary for the proper and efficient operation of the plan" in a manner which will support the intent of the committee.

Sen. Rep. No. 744, 90th Cong., 1st Sess. 166-67 (1967).

§ 406. Definitions.

When used in this part–

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first counsin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

The definition has been continually expanded by Congress throughout the history of the Social Security Act, thereby increasing eligibility of needy dependent children so that they may pursue or complete an education which meets the constantly expanding educational requirements for the various vocations, trades, occupations and professions, and the expanding educational opportunities that have accompanied the increased requirements.

A review of the legislative history of the development of the "age qualified child" definition confirms that Congress mandated that aid be furnished to all those included in the expanded definitions.

Illinois' position advanced in this case is that excluding college and university students saves the state money [A. 93]. Scrimping on the education of welfare children was claimed to be necessary for the fiscal integrity of the state. However, the Illinois Higher Education Assistance Corporation Act, 122 Ill. Rev. Stat. § 30-15.1 (1969), expresses a contrary position. The Illinois General Assembly

views the fullest education of the state's youth as an essential goal:

> § 30-15.1. Purpose
>
> The General Assembly has found and hereby declares that the provision of a higher education for all residents of this State who desire such an education and are properly qualified therefor is important to the welfare and security of this State and Nation, and consequently is an important public purpose; many qualified students are deterred by financial considerations from completing their education, with a consequent irreparable loss to the State and Nation of talents vital to welfare and security. The number of qualified persons who desire higher education is increasing rapidly, and the physical facilities, faculties, and staffs of the institutions of higher learning operated by the State will have to be expanded greatly to accommodate such persons, with an attendant sharp increase in the cost of educating such persons. A system of financial assistance of scholarships, grants, and guaranteed loans for qualified residents of college age will enable them to attend qualified institutions of their choice in the State, public or private. As amended 1967 Aug. 3, Laws 1967, p. 2644.

To help implement this necessary goal, Illinois enacted the Educational Facilities Act, 144 Ill. Rev. Stat. § 1301, *et seq.* (1969). The state declared its purpose as follows:

> § 1301. Declaration of purpose
>
> It is declared that for the benefit of the people of the State of Illinois, the conduct and increase of their commerce, the protection and enhancement of their welfare, the development of continued prosperity and the improvement of their health and living conditions *it is essential that this and future*

> *generations of youth be given the fullest opportunity to learn and to develop their intellectual and mental capacities and skills;* that to achieve these ends it is of the utmost importance that institutions for higher education within the State be provided with appropriate additional means to assist such youth in achieving the required levels of learning and development of their intellectual and mental capacities and skills; and that it is the purpose of this Act to provide a measure of assistance and an alternative method to enable institutions for higher education in the State to provide the needed additional facilities and structures for the public benefit and good and in execution of the public policy set forth above. (Emphasis added.)

The state's position in this case is to save money. However, the Social Security Act was not created with that purpose in mind. The Act was passed during the worst financial crisis this nation has ever experienced. But the human crisis behind it impelled the nation to spend large sums to provide for needy and dependent children and adults. The expansion of eligibility by Congress has always cost money. But Congress has recognized that there must be a balance between short-term financial considerations and long-term financial considerations. In the long run picture, encouraging children to obtain as full an education as possible is more likely to relieve the human distress and waste of national resources than a policy of allowing them to drift into the most menial tasks which may not exist tomorrow.

### 1. *The Social Security Act of 1935 Granted AFDC To All Children Under Age 16.*

The purpose of the Social Security Act of 1935 was to provide for the economic security of many of the nation's destitute citizens, and in particular to provide for the security of children. In agreement with the President's Committee on Economic Security, the Senate Report

declared, "The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children." Sen. Rep. No. 628, 74th Cong., 1st Sess. 16 (1935). The House Report also agrees with the President's Committee on Economic Security stating, "The core of any social plan must be the child." H.R. Rep. No. 615, 74th Cong., 1st Sess. 10 (1935). Both reports recognized that state and local government could no longer do the job of providing assistance to dependent children. Both Reports and Administration's witnesses who appeared before the committees noted the glaring gap in the state's enactment and execution of Mothers' Pension Laws, the predecessors of AFDC, which varied throughout the country and the need for national uniform standards. H.R. Rep. No. 615, 74th Cong., 1st Sess.,

10-12 (1935).[25] Sen. Rep. No. 628, 74th Cong., 1st Sess., 17-19 (1935).[26]

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[25]The House Report indicated that all eligible children would receive aid:

> Dependent Children
>
> One clearly distinguishable group of children, now cared for through emergency relief, for whom better provision should be made, are those in families lacking a father's support. Nearly 10 per cent of all families on relief are without a potential breadwinner other than a mother whose time might best be devoted to the care of her young children. Last fall it was estimated that there were 350,000 families on relief, the head of which was a widowed, separated, or divorced mother and whose other members were children under 16. Above 700,000 children under 16 belong to such families, and, with the increase in relief lists since then, this number has probably increased proportionately.
>
> It has long been recognized in this country that the best provision that can be made for families of this description is public aid with respect to dependent children in their own homes. Forty-five States now have laws providing such aid, but in many of these States the laws are only partially operative or not at all so. With the financial exhaustion of State and local governments a situation has developed in which there are more than three times as many families eligible for such aid as are actually in receipt of it, and they are now being supported by emergency relief.
>
> For the welfare of the many young children involved, it is highly desirable that these families should be taken care of through public aid. This will not be possible, however, unless the Federal Government aids the States in carrying this burden. Such aid is proposed in Title IV of this bill, under which the Federal Government will assume one-third of the cost of aid to dependent children paid under State laws. This does not involve any larger expenditures than the Federal Government has been making for the support of these families on relief, but will very materially aid the States in caring for this group of their unemployables, for whom they must now assume responsibility. H.R. Rep. No. 615, 74th Cong., 1st Sess. 9-12 (1935).

[26]The Senate Report found "great need for special safeguards for many underprivileged children" and extension of aid to all eligible children was contemplated:

[continued]

It was the expectation of both committees that all children under the age of 16 in states which submitted a plan

Security for Children

The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children. Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers; and even old-age pensions and old-age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.

In addition, however, there is a great need for special safeguards for many underprivileged children. Children are in many respects the worst victims of the depression. The relief census of October, 1933 disclosed that 42 per cent of all persons on emergency relief were children under 16 years of age, although this age group constitutes only 31 per cent of the total population. If this percentage still holds good there are now above eight million children on emergency relief. As the House Ways and Means Committee well stated: "With so many children now growing up under the abnormal conditions involved in relief and the many hardships created through the depression, it is imperative that everything possible be done to offset the demoralizing and deteriorating effects of the great disaster that has befallen this country."

Many of the children included in relief families present no other problem than that of providing work for the breadwinner of the family. These children will be benefited through the work relief program and still more through the revival of private industry. But there are large numbers of children in relief families which will not be benefited through work programs or the revival of industry.

These are the children in families which have been deprived of a father's support and in which there is no other adult than one who is needed for the care of the children. These are principally families with female heads who are widowed, divorced, or deserted. A careful estimate based upon surveys in many different communities indicated that in the fall of 1934 there were above 350,000 families of this character on emergency relief rolls, with above 700,000 children under 16 years of age included among their members.

With no income coming in, and with young children for whom provision must be made for a number of years, families who are without a father's support require public assistance, unless they have been left with adequate means or are aided by friends and relatives. No less than 45 States

[continued]

were to be covered, and would include those children then being covered by federal emergency relief who were not

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have enacted laws to meet the particular needs of such families. These are the mothers' pension laws under which aid is given to the dependent children on a basis similar to old-age pensions. Through cash grants adjusted to the needs of the family it is possible to keep the young children with their mother in their own home, thus preventing the necessity of placing the children in institutions. This is recognized by everyone to be the least expensive and altogether the most desirable method for meeting the needs of these families that has yet been devised.

But while 45 States have made provisions for mothers' pensions, there are at this time more than three times as many eligible families on emergency relief as are in receipt of mother's pensions. In three of the 45 States with mothers' pensions laws no such pensions were paid in 1934. In many other States pensions were paid only in some counties; in fact, mothers' pensions are now being paid in less than one-half of all counties in States which have mothers' pension laws. Where pensions are allowed the grants are often inadequate, the average per month per family ranging from $7.29 in the lowest State to $60.14 in the highest....

There is great need for expansion in actual operation of the mothers' pension laws and in many States for the liberalization of the pensions. When the Federal Government turns back to the States the responsibility for the unemployables, the number of families for whom mothers' pensions should be provided will be more than doubled. Many States will be unable, without some assistance from the Federal Government, to assume this additional cost, with a net result of great suffering and damage to the children in these fatherless families. It is for this reason that title IV proposes to inaugurate a policy of Federal grants-in-aid to the States based upon their expenditures for mothers' pensions. These grants-in-aid are made under conditions very similar to the grants for old-age assistance. Instead of equal matching, however, the Federal Government under title IV will only pay one-third of the total cost, subject to the maximum limitations specified in Section 403(a). It is believed that this aid will prove sufficient to bring about a substantial extension of the mothers' pensions. This program does not represent an attempt to dictate to the States how they shall care for families of this character, but is recognition of the fact that many States need aid to carry out the policy which they have already adopted. Sen. Rep. No. 628, 74th Cong., 1st Sess., 16-19 (1935).

covered under existing state Mothers' Pension Laws. H.R. Rep. No. 615, 74th Cong., 1st Sess. 9-12 (1935). These reports reaffirmed the views of the Administration's spokesmen presented to the Committees.

A "dependent child" for purposes of the AFDC title was defined in § 406 of the original Act:

> DEFINITIONS.
>
> Sec. 406. When used in this title—
>
> (a) The term "dependent child" means a child under the age of sixteen who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity or a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt, in a place of residence maintained by one or more of such relatives as his or their own home; (b) The term "aid to dependent children" means money payments with respect to a dependent child or dependent children.

Section 406(b) spelled out that the "aid to the dependent children" which was to be furnished the dependent children defined in Section 406(a) was "money payments."

Those children in Section 406(a) whose claim for "money payments" under § 406(b) was denied, were provided a remedy by § 402(a)(4) which imposed on the states a duty to grant "to any individual, whose claim with respect to aid to a dependent child is denied, an opportunity for fair hearing before such state agency. . . ." These sections, in combination, make clear that there was no Congressional approval for a state plan which limited AFDC benefits to children less than 16 years old.[27]

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[27] This interpretation is not apposite to that of this Court in *King v. Smith*, 392 U.S. 309, 317, 333 (1968), which based the duty owed by the state on the combination of § 402(a)(10) (duty to furnish aid with reasonable promptness) and § 406(a). Section 402(a)(10) was added in 1950 to strengthen the fair hearing requirement and to deal

### 2. *The 1939 Social Security Act Amendments Required AFDC To Be Furnished To Children 16 to 18 If Regularly Attending School.*

The original congressional intent to provide minimum federal standards to insure the security of children was sustained and the protection increased by subsequent congressional developments.

On December 30, 1938, the Social Security Board submitted its report to the President of the United States regarding desirable amendments to the Social Security Act. In the AFDC section of the report the Board recommended that the age qualification for dependent children be raised from 16 to 18 for children regularly attending a school. This was a recognition of the desirability of encouraging children to finish high school as well as the need to keep them for longer periods outside an already cluttered labor market.[28]

The House Report viewed the amendment as part of a program to promote the security of the family and the home, which contemplated that states would be obliged to amend their laws to comply with the amendment:

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with the problem contemplated and prohibited by Congress but which was subsequently allowed through administrative interpretation—the use of waiting list to deny aid to otherwise eligible persons.

[28]Mr. Altmeyer, one of the members of the Social Security Board, testifying at the Senate Finance Committee Hearings on the 1939 amendments, stated the Board's position on this amendment as follows:

> The Board has also recommended that the age limit for dependent children should be raised in the Federal law from 16 to 18 years when the child is regularly attending school. This would recognize the present desirable tendency for children to finish high school before seeking permanent employment. This recommendation has been embodied in H.R. 6635.

Senate Committee on Finance, Social Security Act Amendments. Hearings on H.R. 6635, 76th Cong., 1st Sess. 33 (1939).

The bill makes two changes, effective January 1, 1940, designed to expand aid to dependent children. They are as follows:

* * * * *

The age limit for Federal grants is raised from 16 to 18 if the state agency finds that the child is regularly attending school. This will enable most children to finish high school. Six States already provide aid to children up to the age of 18 and six additional States have the necessary legislation to take advantage of this amendment immediately. It is estimated that about 100,000 additional children may obtain aid by virtue of this change, provided all States amend their laws accordingly. H.R. Rep. No. 728, 76th Cong., 1st Sess. 28-29 (1939).[29]

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[29]The House Report stated in relevant part:

> The committee has included in the bill several amendments designed to liberalize and clarify existing Federal provisions concerning public assistance and to simplify the administration of the State plans. No fundamental change in Federal-State relations is proposed . . .
>
> The bill makes two changes, effective January 1, 1940, designed to expand aid to dependent children. They are as follows:
>
> 1. The Federal matching is increased from one-third to one-half. This will enable the States to give aid to many additional needy children. There are at the present time about 165,000 children in 71,000 families who have filed applications in the States for aid and many more who will be eligible for aid when these additional funds become available.
>
> 2. The age limit for Federal grants is raised from 16 to 18 if the State agency finds that the child is regularly attending school. This will enable most children to finish high school. Six States already provide aid to children up to the age of 18 and six additional States have the necessary legislation to take advantage of this amendment immediately. It is estimated that about 100,000 additional children may obtain aid by virtue of this change, provided all States amend their laws accordingly.
>
> It is estimated that the present State programs, when amended in accordance with the provisions of this bill will enable the States to provide monthly benefits for at least

The Senate Report approved the amendments because "[O]ur obligation to provide care for the children of today who will be the parents of the next generation is one which must be met. The amendments recommended to both the insurance and the assistance titles are part of a common program to promote the security of the family and the home." Sen. Rep. No. 734, 76th Cong., 1st. Sess., 30 (1939).[30]

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1,000,000 dependent children or over 300,000 more children than are being aided at the present time.

The additional cost to the Federal Government of these two amendments is difficult to estimate due to the fact that the amendments are effective only at such time and to the extent that the States match the Federal funds. The additional costs of these amendments for assistance to children is estimated at about $30,000,000 to $50,000,000 per year. Some of this cost will be offset in future years because of the widows' and orphans' benefits provided under the insurance plan. In any case, our obligation to provide care for the children of today who will be the parents of the next generation is one which must be met. The amendments recommended to both the insurance and the assistance titles are part of a common program to promote the security of the family and the home.

H.R. Rep. No. 728, 76th Cong., 1st Sess. 27-29 (1939).

[30]The Senate Report was substantially the same as the House Report.

The Senate did include one additional amendment to the expansion of eligibility by including non-remunerative apprentices in the same class as children regularly attending school. This was the result of questioning of Mr. Altmeyer, by Senator Gerry of Pennsylvania, during the Senate Finance Committee Hearings. Senator Gerry thought that the child learning a trade would be discriminated against. An amendment was introduced on the floor of the Senate to extend the definition of a dependent child to include those under 18 who were serving apprenticeship "without remuneration." 84 Congressional Record, 11088 (August 4, 1939). This amendment was deleted in conference. See Senate Committee on Finance, Social Security Act Amendments, Hearings on H.R. 6635, 76th Cong., 1st Sess. 19-20 (1939).

Both Reports stated, "No fundamental change in Federal-State relations are proposed." This statement when viewed with the other 1939 amendments indicates that the improvements in the ADC program, such as increasing the matching grant formula, imposing restrictions on disclosure, the requirement of merit standards for State administrative personnel, and the requirement that in determining need the states must consider any other income and resources of the individual claiming assistance, did not alter the basic spheres of federal-state authority set down by Congress in 1935. The states still retained the ability to determine need and to set the standard of adequacy and apply them to the facts of an applicant's case to determine eligibility.[31] The Federal Government still retained its power to determine who the classes of eligible individuals for measurement against state determined need and standard of assistance would be, including the prescription that 16 to 18 year old children regularly attending school would be eligible for AFDC benefits.

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[31] The term "needy" was not added until the 1939 amendments. The states' power to define the standard of need and set the level of benefits was implicit and accepted by the Social Security Board after the House Ways and Means Committee amended the Administration's bill, H.R. 4120, 74th Cong., 1st Sess., § 204 (1935), by deleting the requirement that states must furnish sufficient assistance which, when combined with available family income, would assure a "reasonable subsistence compatible with decency and health." The Senate Finance Committee caused a specific provision to be inserted in § 401 providing that federal funds were to enable each state to furnish assistance only "as far as practicable under the conditions in such states." The impetus behind removing the federal requirement of decency and health appears to have been based on states' rights considerations in maintaining segregation. Witte, *The Development of the Social Security Act* 144 (1962).

### 3. *The 1956 Social Security Act Amendments Removed The School Attendance Requirement For 16 to 18 Year Old AFDC Children.*

In 1956, among the Administration's proposed amendments were two changes to extend coverage to the Aid to Dependent Children Program. One of them eliminated the requirement that children between the ages of 16 and 18 be regularly attending school. Jay Roney, Director of the Bureau of Public Assistance, in presenting the Administration's proposals stated that the change to liberalize eligibility was "comparatively minor" but desirable because of the needs of the children involved.[32] The House did not report these two administration proposals. The Senate Finance Committee reported them as two amendments to H.R. 7225. The Senate Report stated:

> Two amendments have been made to the aid to dependent children title neither of which affects large numbers of children but both of which *make* some additional needy children eligible for aid. . . . The second [amendment] would eliminate the requirement that for a needy child between the ages of 16 and 18 to receive aid, he be in regular attendance at school. This would permit Federal sharing in assistance to such children unable to attend school because of illness or handicap, or because school facilities are not available. (Emphasis added) Sen. Rep. No. 2133, 84th Cong., 2nd Sess. 30 (1956).

The Conference Report referred to the two amendments as follows:

> These amendments also eliminate the requirement that a needy child between 16 and 18 years of age

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[32] House Committee on Ways and Means, Public Assistance Titles of the Social Security Act, Hearings on H.R. 9120, 9091, 10283, and 10384, 84th Cong., 2nd Sess., 22 (1956). See also Testimony of Charles I. Scholtland, Commissioner of Social Security, Department of Health, Education and Welfare, *Id.* at 34-40.

> must be regularly attending school in order *to be eligible for aid to dependent children.* The House recedes. Conf. Rep. No. 2936, 84th Cong., 2nd Sess. 42 (1956). (Emphasis added).

The Senate Report makes clear the intent to "make" additional needy children eligible for aid. It eliminated the requirement that children between the ages of 16 and 18 be in regular attendance at a school in order "*to receive aid.*" (Emphasis added.) The use of the term "permit Federal sharing" in the report is seized upon in the amicus brief of the government (p. 6) as justification for its view that the states could chose not to grant aid to 16 to 18 year old students in school. However, the government completely ignores the Conference Report. Such an inference asserted by the government is unsound and not supported by either the Senate or Conference Reports, the changed nature of the program[33] or the developed comprehensive federal scheme of

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[33]The changing nature of the Aid to Dependent Children Program also must be recognized. In the 1950 amendments, Congress required the states to furnish aid to eligible individuals with reasonable promptness, included the parent or near relative with whom the dependent child was living as an eligible individual for AFDC payments, and made provision for notification to law enforcement officials of aid being furnished to a child who had been deserted or abandoned by a parent. The *changed nature* of the program is also evidenced by the 1956 amendments which made explicit that the strengthening of family life was a major congressional concern.

No one would now contend that a state might refuse to furnish assistance to the mother of a dependent child on the grounds that it would make her more employable after Congress has declared her eligible, *see Woolfolk v. Brown,* 2 CCH Pov. L. Rep. ¶13, 170 (E.D. Va. Apr. 22, 1971) (Virginia's "work rule" conflicts with federal WIN Program); *Anderson v. Burson,* 300 F.Supp. 401, 404 (1968) (Georgia's employable mother rule invalid), or on the grounds of her immorality, *see King v. Smith,* 392 U.S. 309 (1968); *Doe v. Harder,* 310 F.Supp. 302 (D. Conn. 1970) *appeal dismissed* 399 U.S. 902 (1970) (contempt citation against Commissioner of Connecticut State Welfare Department purged by changing regulation which denied aid to mother of illegitimate children who

education, work training and employability for children considered *infra* at 80-82. The use of the term "permit Federal sharing" in the report is conclusory in nature, stating what is obvious, and not an indication of permissiveness towards the states. Federal sharing is not permitted under the Act unless the state complies with the terms and purposes of the Act. *King v. Smith*, 392 U.S. 309, 333 n. 34 (1968).

The Conference Report is even stronger evidence of Congress' intent to declare these children eligible. It indicates that Congress simply made these children eligible.

4. *The 1964 Social Security Act Amendments Extended AFDC Benefits To 18 To 21 Year Old High School, Vocational Or Technical School Students.*

The 1964 and 1965 amendments were part of a 1960's public assistance orientation, much different than in previous years, reflecting a significant change in a nation itself and its people. The public assistance crisis of the 1960's was in the family itself and its ability to prepare its younger members for life. In 1964 legislation was introduced in both the public assistance title and the OASDI title to provide benefits for children past the age of 18 who were continuing in school. The Senate amended the House Bill, H.R. 10473. This was necessary the Senate Report found because "the assumption that children are no longer dependent upon attaining age 18 is not valid as applied to children still attending school."

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would not cooperate with welfare department); *Evans v. Dept. of Social Services*, 22 Mich. App. 633, 178 N.W.2d 173 (1970) (Michigan's requirement that a mother's previous welfare fraud renders her dependent children ineligible for assistance.)

EXTENSION OF AGE LIMIT FOR DEPENDENT CHILDREN IN SCHOOL

The committee has added a provision which would extend Federal matching as to payments of aid to families with dependent children where a child has attained 18 but is still attending high school or a vocational school. The child must be in regular attendance in pursuance of a course of study leading to a high school diploma, or its equivalent, or in regular attendance in a course of vocational or technical training designed to fit him for gainful employment. Upon reaching age 21, or withdrawing from school, eligibility for Federal matching would cease. The extension of the program in this manner would be optional with the States.

The assumption that children are no longer dependent upon attaining age 18 is not valid as applied to children still attending school. Moreover, the present sharp cutoff at age 18 may have the effect of forcing just those children to leave school who are most in need of a high school education or vocational training if they are to become self-sufficient and stay off the welfare rolls.

The estimated cost of this amendment is $2 million for the first full year and $11 million after 5 years, assuming that half of the States are then participating. Sen. Rep. No. 1517, 88th Cong., 2nd Sess. 2 (1964).

The Senate amendment to the House Bill was concurred in on the floor of the House. The House considered the amendment corollary to H.R. 11865, which was to extend welfare benefits to students over 18 eligible under the OASDI system. The Senate Report on the OASDI (H.R. 11865) and the public assistance were essentially the same in reasoning and purpose. Children over 18 still attending school are still dependent. The OASDI report acknowledged in more detail the significant changes in national life and the need for Congressional action:

> With many employers requiring more than a high school education as a condition for employment, education beyond the high school level has become almost a *necessity* in preparing for work.
>
> The committee believes it is now appropriate and desirable to provide social security benefits for children who are full-time students between the ages of 18 and 22 and most of whom will have suffered a loss of parental support. Sen. Rep. No. 1513, 88th Cong., 2nd Sess. 9 (1964) (Emphasis added).

The OASDI provisions did not pass in 1964. The public assistance age provision did pass in 1964, and was amended again in 1965 to include college and university students thereby bringing it in line with the OASDI title, which passed in 1965.

For the first time in any of the committee reports on extending federal AFDC age eligibility, a report used the term optional in describing the extension of this program. The obvious conclusion to be drawn is that all the previous amendments were mandatory upon the states and that Congress specifically spelled out that this one would not be. However, the only option incorporated into the legislation was for the Secretary of HEW to set standards for the schools or courses that would qualify a child to receive AFDC benefits. To read the age amendment as optional would be counter to the reasoning and purpose of the reports and the previous legislative history. If it is read as optional, the 1965 amendment dispels that such a view is now compatible with the statute.

5. *The 1965 Social Security Act Amendments Extended AFDC Benefits To 18 To 21 Year Old Welfare Children Attending A College Or University.*

The 1965 amendments to § 406(a) closed the gap in AFDC children's school eligibility and established substantial equity as to eligibility for dependent children under both the OASDI and public assistance systems.

The Senate Finance Committee introduced an amendment to H.R. 6675 which granted AFDC to children who were in attendance at a college or university between the ages of 18 and 21. The purpose of the OASDI and AFDC provisions was the same, "[T]o assure, as far as possible, that children will not be prevented from going to school or college because they are deprived of parental support:

> AID TO FAMILIES WITH DEPENDENT CHILDREN IN SCHOOL
>
> Under existing law States, at their option, may continue payments to needy children up to age 21 in the aid to families with dependent children program, providing they are "regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." The committee added an amendment extending this provision so as to include needy children under 21 who are regularly "attending a school, college, or university." Federal sharing for this purpose would thus be available to States who implement such a program for payments to children regularly attending a college, or university, as well as those attending high school or a vocational school, thus bringing this provision more nearly in line with the provision of the bill relating to the continuation of a child's benefits under the OASDI system. The objective of the provision in both programs is to assure, as far as possible, that children will not be

> prevented from going to school or college because they are deprived of parental support. Sen. Rep. No. 404, 89th Cong., 1st Sess. 147 (1965).

The Conference Committee stated the "amendment would broaden the type of schools that children over the age of 18 and under the age of 21 may attend and receive aid to families with dependent children payments in which the federal government will participate. The Conference Report also deleted the reference that the extension by the states was optional. It made clear that it was expanding the types of schools a child between 18 and 21 could attend and receive AFDC:

> Eligibility of children over 18 attending school.
>
> Amendment No. 511: This amendment would broaden the type of schools that children over the age of 18 and under the age of 21 may attend and receive aid to families with dependent children payments in which the Federal Government will participate. The extension would be from the requirement that the child be (as determined in accordance with standards prescribed by the Secretary of Health, Education and Welfare) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, to the requirement that he be (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college or university. The House bill contained no provision on this subject. The House recedes. Conf. Rep. No. 682, 89th Cong., 1st Sess. 69-70 (1965).

Even if the lower court were correct in its view that the extension of aid past age 18 is optional [A. 87-91] for Illinois, it still erred in allowing the defendants to exclude welfare children attending a college or university. If a state extends past 18, it must extend to all the types of schools defined in § 406(a). If the theory of the Social Security Act accepted by the court below is sustained, Illinois might, for instance, grant benefits past 18 in the following situa-

tions: (1) a university student, but not a high school student, (2) a technical school student, but not a vocational school student, (3) a vocational school student but not a high school student, (4) a college or university student but not a technical school student.

There is no authority, either in reason or the Act and its legislative history to sustain such results. The Senate Report stated "The Committee added an amendment *extending this provision* [the 1964 amendment] so as to include needy children under 21 who are regularly 'attending a school, college or university.'" Sen. Rep. No. 404, 89th Cong., 1st Sess., 147 (1965) (emphasis added). If the 1964-1965 amendments are to be viewed as optional, they are optional taken together, and Illinois must repair its scheme to accord with a proper exercise of that option.

It is apparent upon examining the legislative history of the Act that Congress has viewed the education and employment of dependent youth and adult as a national problem which must be dealt with on a national basis. Illinois is in accord with this position. People move from state to state freely. From the inception of this country people have moved from place to place in search of a better life. We are a people used to moving. Recent migrations of our population underscore this tradition. However, recent migrations have brought people with widespread illiteracy and unsophisticated rural skills to complex and technical urban settings. Many of them are now dependent upon welfare for a meager subsistence. While Congress has decided that only a national uniform policy can solve these difficult problems, both Congress and this Court have been sensitive to the needs of the states because of taxing limitations with which they must contend. Therefore states have been given the power to determine the standard of need and level of benefits for themselves, and have been allowed to use maximum grants within even this fiscal structure. What the states have not been given the power to do is to determine the classes of eligible recipients. A state may allocate

differently among those made eligible by Congress, but it may not totally exclude persons made eligible by Congress. What Illinois has done to Omega Minor and other children similarly situated is prohibited. *Rosado v. Wyman,* 397 U.S. 397 (1970); *Dandridge v. Williams,* 397 U.S. 471 (1970).

### D. Proper Judicial Construction Of The Social Security Act Mandates That AFDC Be Furnished To Needy, Dependent College Students.

Both Congress and this Court have found that the overriding purpose of the Social Security Act is to provide for the security of dependent children. Any construction of the AFDC title must begin with the premise that it has the special mandate to protect dependent children who are needy.

Interpretation of the term "dependent child" in Section 406(a) as urged by intervening-appellants is strongly supported by the way the term is used in other Sections of the Act and in relation to a child's education and employability. Section 402(a)(8)(A) requires that effective July 1, 1969, a state *must disregard:*

> (i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment. . . .[34]

The purpose of this provision is clearly to provide an incentive for dependent children to continue in school.

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[34] See, H.R. Report 544, 90th Cong., 1st Sess., 16-17, 106-107 (1967); Sen. Rep. No. 744, 90th Cong., 1st Sess., 27-28, 157-159 (1967); Conf. Rep. No. 1030, 90th Cong., 1st Sess. (1967).

The dependent child whose earned income is exempt under § 402(a)(8)(A)(i) because he is a student is surely the same dependent child referred to in § 406(a). *King v. Smith*, 392 U.S. 309, 330 (1968). And Congress obviously did not intend that the dependent child whose earned income is exempted by the operation of this provision of § 402(a), which even the United States and the court below conceded is mandatory on Illinois, would receive no AFDC benefits in the first place or in fact decrease the amount of assistance the child's family receives because the child is not eligible. If the income is not disregarded it will be budgeted by defendants to meet what they believe to be the child's share of the rent and household expenses (IDPA-CAM, § 1252.2) and that amount will be deducted from the family's grant.

If this Court upholds the decision of the lower court and adopts Illinois' provision which grants aid and the income exemption to vocational school students and denies aid and the exemption to college and university students, it will unravel the legislative intent to encourage students to pursue their education. It would act as a disincentive to work for these children.

The federal scheme for the education, work training and employment of needy dependent children is further emphasized by the use of the term "dependent children" in §§ 402 (a)(15) and (19) in combination with § 430, *et seq.* These sections of the AFDC title were added by the 1968 amendments and are commonly known as the Work Incentive Program (WIN). The Congressional purpose, apparent on the face of the statute, was to provide "for the development of a program for each appropriate relative and dependent child . . . with the objective of assuring to the maximum extent possible, that such relative child and individual will enter the labor force and accept employment so that they will become self-sufficient and . . . otherwise strengthening family life." Section 402(a)(15). Children over the age of sixteen were to be referred to the Secretary of Labor or his representative for participation in the Work Incentive Pro-

gram. *The states were appropriately prevented from referring a child over the age of sixteen who was attending school full-time. Section 402(a)(19)(A).* (These portions of the Act are set out in Appendix A.)

These extensive amendments of the Act leave no doubt that Congress has enacted a comprehensive program for the education, work training and employability of dependent children. The pattern of this legislative scheme is clear. Children over the age of sixteen who are not regularly attending school are to be referred to a Work Incentive Program for further training or employment. Children attending school full-time are exempted from the WIN Program and are specifically encouraged by the student income exclusion to obtain as much education as they can. The underlying policy considerations and consistency in statutory interpretation require that the "dependent child" referred to in these statutory provisions is the same "dependent child" as that in Section 406(a). Such a federal scheme can only be secured where the state is under the duty to provide assistance to all those children made eligible by Congress. Illinois is frustrating and retarding declared Congressional policy by its refusal to grant AFDC benefits to otherwise eligible college and university students. Illinois has no real justification for its policy of exclusion and the interest that it advances, fiscal savings, can be dealt with in other, more appropriate, manners. *King v. Smith,* 392 U.S. 309, 333-334 (1968).

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## CONCLUSION

For the reasons stated above, the judgment of the district court below should be reversed and the cause remanded to the district court with instructions, as there is no factual matter in dispute, to enter summary judgment for the intervening–plaintiff appellants and other appropriate relief as prayed for in intervening plaintiffs complaint.

Respectfully submitted,

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Community Legal Counsel
Chicago, Illinois

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## APPENDIX A

[42 U.S.C. (Supp. IV 1968)]

**§ 601. Appropriations**

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

**§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary**

(a) A State plan for aid and services to needy families with children must * * * (8) provide that, in making the determination under clause (7), the State agency–

(A) shall with respect to any month disregard–

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child)

whose needs are taken into account in making such determination, the first $30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title); and

(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard not more than $5 per month of any income;

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of—

(C) any one of the persons specified in clause (ii) of subparagraph (A) if such person—

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause

(7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such persons were met by the furnishing of aid under the plan;

* * * * *

(10) provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals;

* * * * *

(14) provide for the development and application of a program for such family services, as defined in section 606 (d) of this title, and child-welfare services, as defined in section 625 of this title, for each child and relative who receives aid to families with dependent children, and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the particular home conditions and other needs of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development;

(15) provide—

(A) for the development of a program for each appropriate relative and dependent child receiving aid under the plan, and each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), with the objective of—

(i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient, and

(ii) preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life,

(B) for the implementation of such programs by–

(i) assuring that such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child-care services and that in all appropriate cases family planning services are offered them, and

(ii) in appropriate cases, providing aid to families with dependent children in the form of payments of the types described in section 606(b)(2) of this title, and

(C) that the acceptance by such child, relative, or individual of family planning services provided under the plan shall be voluntary on the part of such child, relative, or individual and shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan,

(D) for such review of each such program as may be necessary (as frequently as may be necessary, but at least once a year) to insure that it is being effectively implemented,

(E) for furnishing the Secretary with such reports as he may specify showing the results of such programs, and

(F) to the extent that such programs under this clause or clause (14) are developed and implemented by services furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

* * * * *

(19) provide–

(A) for the prompt referral of the Secretary of Labor or his representative for participation under a work incentive program established by part C of–

(i) each appropriate child and relative who has attained age sixteen and is receiving aid to families with dependent children,

(ii) each appropriate individual (living in the same home as a relative and child receiving such aid) who has attained such age and whose needs are taken into account in making the determination under section 602(a) (7) of this title, and

(iii) any other person claiming aid under the plan (not included in clauses (i) and (ii)), who, after being informed of the work incentive programs established by part C, requests such referral unless the State agency determines that participation in any of such programs would be inimical to the welfare of such person or the family;

except that the State agency shall not so refer a child, relative, or individual under clauses (i) and (ii) if such child, relative, or individual is—

(iv) a person with illness, incapacity, or advanced age,

(v) so remote from any of the projects under the work incentive programs established by part C that he cannot effectively participate under any of such programs,

(vi) a child attending school full time, or

(vii) a person whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household;

(B) that aid under the plan will not be denied by reason of such referral or by reason of an individual's participation on a project under the program established by section 632(b)(2) or (3) of this title;

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 20 per centum of the cost of such programs, as specified in section 635(b) of this title;

(D) that (i) training incentives authorized under section 634 of this title, and income derived from a special work project under the program established by section 632(b)(3) of this title shall be disregarded in determining the needs of an individual under section 602(a)(7) of this title, and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 632(b) (2) or (3) of this title shall be taken into account;

(E) that, with respect to any individual referred pursuant to subparagraph (A) who is participating in a special work project under the program established by section 632(b)(3) of this title, (i) the State agency, after proper notification by the Secretary of Labor, will pay to such Secretary (at such times and in such manner as the Secretary of Health, Education, and Welfare prescribes) the money payments such State would otherwise make to or on behalf of such individual (including such money payments with respect to such individual's family), or 80 per centum of such individual's earnings under such program, whichever is lesser and (ii) the State agency will supplement any earnings received by such individual by payments to such individual (which payments shall be considered aid under the plan) to the extent that such payments when added to the individual's earnings from his participation in such special work project will be equal to the amount of the aid that would have been payable by the State agency with respect to such individual's family had he not participated in such special work project, plus 20 per centum of such individual's earnings from such special work project; and

(F) that if and for so long as any child, relative, or individual (referred to the Secretary of Labor pursuant to subparagraph (A) (i) and (ii) and section 607(b)(2) of this title) has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under

a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 608 of this title will be made;

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

except that the State agency shall, for a period of sixty days, make payments of the type described in section 606(b)(2) of this title (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or

individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor;

* * * * *

**§ 606. Definitions**

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

* * * * *

## APPENDIX B

Handbook of Public Assistance Administration
"Green Sheets"
(Supplemental Pages for the Handbook)

| Part IV | Eligibility, Assistance, and Services | |
|---|---|---|
| 3200-3299 | Age | 10/11/65 |

G-3200. *Age*

G-3210. *Provisions of the Act*

*Aid to Families With Dependent Children*—Section 406 of the Social Security Act states as follows: "When used in this title—(a) The term 'dependent child' means a needy child . . . (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."

G-3220. *Interpretation*

The objective of the optional extension of the AFDC age limit to age twenty-one is to make it possible for States to claim Federal financial participation in the cost of assistance given in behalf of individuals under that age, while enabling them to take advantage of educational opportunities to improve their preparation for self-support.

At age 18, some young people may not yet be in high school and some age 18 to 21 are attending high school or institutions of higher learning, but may not have graduated. ssistance may be the factor in enabling them to continue n school. Others may be helped to return to school or take advantage of vocational or technical training, if financial assistance in their behalf is available, and thus become better prepared to enter the labor market. These provisions include not only the youth living with relatives, but also those receiving assistance under AFDC foster care.

A student must be in regular attendance in a school, including elementary grades, high school, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment. Those who are attending school, or taking a course of vocational or technical training, on a part-time basis are considered to be in regular attendance.

A high school diploma is frequently a requirement for many jobs; and frequently, some college training, or even a degree, is necessary. Therefore, it is important to allow a young person the opportunity to at least complete high school, or to undertake advanced study, if he wishes to do so, rather than take specific vocational or technical training.

As is customary with families not receiving public assistance, the decision as to the course of study or training to be taken should be left to the youth and his parents. This does not preclude the recommendations of educational authorities as to the program best suited to the youth's capacities. Within the age limit set by the State, there should be a choice of attending a school, college, or university or taking a course of vocational or technical training for gainful employment.

For purposes of the Act, a course of vocational or technical training is an organized curriculum in a school or training unit or an organized training program under recognized sponsorship with a specified employment objective.

In addition to training courses offered by schools, institutes, or other training programs (e.g. apprenticeships or training arrangements, sponsored by business or industrial firms), youths served by the AFDC program might be eligible for admission to training courses established within programs under the Economic Opportunity Act (title I, Part A, and title V), the Manpower Development and Training Act, the AFDC Unemployed Parent Program (see IV-3424) and the Community Work and Training Program (see IV-3460) under title IV of the Social Security Act, and the Vocational Edu-

cation Acts, Thus, vocational education courses provided pursuant to co-operative arrangements between the State public asssistance agency and the State agency responsible for vocational education, under the authority of title IV of the Social Security Act, may offer training opportunities for youths receiving AFDC.

To achieve the objective of this legislation for increasing a young person's employability, he must have sufficient time, both in or outside the classroom or training center, to do the work required to complete the course. Therefore, a youth attending school or engaged in a training program should not be required to accept employment, in addition to his educational program, to remain eligible for AFDC.

Consideration of payments made under title I or II of the Economic Opportunity Act or programs assisted under such title must conform to legal prohibitions of the Act limiting the amount of such income which can be used in determination of need under public assistance programs. (See IV-3180)

G-3240. *Federal Financial Participation*

Federal financial participation may be claimed for money or foster care payments made, or for vendor payments made for medical services received, on or after July 30, 1965, with respect to children otherwise eligible for AFDC who:

> Have attained age 18 and are under age 21 provided they are regularly attending:
>
> (1) A school, college, or university or
>
> (2) A course of vocational or technical training designed to fit them for gainful employment.

If payments are made under the conditions above, Federal financial participation may be claimed in payments made for months in which the child is not in school because of official school vacation, illness, convalescence, or family emergency, and for the month in which the child becomes

21 or in which he completes or discontinues his school or training attendance.

3400-3499 10/23/46

Factors Applicable to Aid to Dependent Children

3400.

Several factors combine to make up the definition of "dependent child" as used in title IV of the Social Security Act. These eligibility provisions have been interpreted individually, but each interpretation is related to a definite concept of the objectives of aid to dependent children. The interpretations are intended to define and clarify the area of operation in which the Federal Government can participate financially under the act. This has been done (1) to free States from some of the uncertainties that have been partly responsible for restrictions limiting coverage, and (2) to support States in improved practice that accomplishes the objectives of the program.

The specific eligibility factors in aid to dependent children are interpreted in the light of two program objectives: (1) indication of the scope of coverage in Federal-State aid to dependent children programs consistent with the provisions of the Social Security Act; (2) the provision and continuity of service. The interpretations recognize that during periods of special stress or difficulty for children, continuity of service may be of particular importance. Federal participation in the program may be continued for temporary periods while necessary adjustments and readjustments are being worked out in specified situations.

These interpretations, while making possible an increased scope for the development of State policy and practice within the legal framework of the Federal act, are not intended to limit the States in providing programs that extend beyond the bounds of Federal financial participation.

3401. *Purpose of Aid to Dependent Children*

Aid to dependent children is an essential part of a broad social plan of public services, including education, health,

welfare; and the social insurances, that the Nation is progressively developing to assure its children opportunity to:

1. Grow up in a setting of their own family relationships;
2. Have the economic support and services they need for health and development;
3. Receive an education that will help them to realize their capacities; and
4. Share in the life of neighborhood and community.

To live in the family to which he belongs is the foundation of a child's security. The public has an interest and an obligation in sustaining the contribution which parents and immediate family make to the development of a child. Financial inability to meet a child's needs, therefore, should not be allowed to force a parent to surrender responsibility for bringing up the child.

The assumption underlying the aid to dependent children program is that when a family circle is broken or incomplete, or parents are handicapped by physical or mental disability, the measure most conducive to the child's welfare is the strengthening of the home against the financial impact of these lacks or losses and to give his parent, or other relative, a chance to gain or reestablish control over his affairs.

Recognizing the fundamental need of the child for security through receiving care, guidance, and affection from his own family the aid to dependent children program is directed toward enabling the parent, or in his absence a close relative, to ensure continuity in family relationships and to maintain full responsibility for a way of living in which the child naturally belongs. In addition, the program includes in its purpose, providing service, or access to other resources in the community, through which the family may realize their plans and hopes for their children and may improve their circumstances according to their necessity and desire. Thus the purpose of aid to dependent children is two-fold: (1) to make it possible for the child to remain in or return to the custody and care of his parents or of rela-

tives who have a natural bond of affection and concern for his well-being; and (2) to enable the child's unmet need to be supplied.

This purpose of the program must be understood and accepted by administrative officials and made known to applicants, if parents are to be in a position to make decisions with full knowledge of what the program has to offer them. Through contributing to or supplying the family's economic support, aid to dependent children should, for example, make it possible for a mother to choose between staying at home to care for her children and taking a job away from home. She has little or no choice, however, unless the aid available to her is enough to meet the family's maintenance needs and unless that aid is regular and continuous so that she can rely upon it.

Adequate care of the health of both parents and children is an essential factor in attaining the objectives of the program.

Since illness precipitates or aggravates financial and other difficulties, an opportunity to obtain needed medical care may enable a family to regain economic independence. Care of a disabled parent at home may avert separation of members of the family. The program, therefore, must take cognizance of the health factors necessary to preserve the child's home. These factors include both preventive and curative medical services for the child and the parent. Opportunity to obtain medical care and needed supplementary nursing, housekeeping or other services may be made available through the money payment and through agency services directed toward helping the family to use community resources.

The purpose of aid to dependent children is served in providing opportunity for children to develop individual capacity, with some measure of security against future economic hazards. To enable children receiving aid to dependent children to share in the opportunities in their community for education and for physical and social development

requires provision for their special individual requirements as well as for basic maintenance needs within the limits of the resources available. The development of individual capacity is important not only for the individual in achieving a useful and satisfying experience for himself, but it is significant as well for enriching the life of the community. The program is one means of fulfilling a fundamental purpose of all measures for social security—to foster and preserve basic human resources and family life.

4000-4999 11/30/62

Social Services in Public Assistance

4200. *Interpretation*

4210. *Purpose of Legislation*

The preamble to the Social Security Act as originally enacted contains the following:

> "To provide for the general welfare . . . by enabling the several States to make more adequate provision for aged persons, 'blind persons,' and dependent children. . . ."

The 1956 amendments contain the following declaration of purpose:

> "It is the purpose of this title . . . to promote the well-being of the nation by encouraging the States to place greater emphasis on helping to strengthen family life and helping needy families and individuals attain the maximum economic and personal independence of which they are capable."

In 1962 the Social Security Act was further amended for the purpose of "improvement in services to prevent or reduce dependency," thus implementing the national concern about the nature and extent of social problems of people served by the public assistance programs, and the national responsibility for provision and improvement of service to them. These amendments authorized the Secretary to "prescribe" and "specify" services found necessary "for the proper and

efficient administration of the State plan . . . ," and increased the Federal share in the cost of providing the "prescribed" and "specified" services from 50 to 75 percent.

The broad purposes of the legislation are to:

1. Clarify and emphasize the national interest and responsibility in the further development of services with emphasis on strengthening family life, social rehabilitation, prevention of dependency, self-support, and self-care.

2. Encourage and enable State agencies to develop and expend social services in their programs, recognizing that primary responsibility rests with the State agencies to determine the purposes and scope of their assistance programs within the framework thus set forth in the Federal Act.

3. Provide increased Federal financial participation to assure, at least, services in respect to problems and conditions of families, children, and adults that handicap their family life, or prevent the attainment of self-support and self-care.

4. Establish a basis for cooperative working relationships between the public assistance programs and other programs within public welfare agencies and other related agencies in the community, in providing services to individuals and families currently or formerly receiving assistance, and to prevent dependency on the part of other persons.

5. Strengthen the framework for Federal-State responsibilities in developing and providing such services.

4220. *Social Purposes of Public Assistance Program*

4221. *Title IV*

The restatement of the purpose of Aid and Services to Needy Families with Dependent Children reads:

"For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial

assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. . . ."

4222. *Titles I, X, XIV and XVI*

Each of these titles has the purpose "of enabling each State, as far as practicable under conditions in such State, to furnish rehabilitation and other services to help individuals . . . attain or retain capability for self-care."

Titles X, XIV, and XVI, specify the further purpose as "to furnish rehabilitation and other services . . . for self-support. . . ."

While self-support is not a specific purpose of service to the aged, it is not precluded when appropriate for the individual. Rehabilitation—personal, social and economic—is, therefore, a basic objective in all the four categories to the extent it is practicable for the individual.

4223. *Definition of Social Purposes*

A primary purpose of the 1956 and 1962 amendments is to stimulate and extend constructive services in the public assistance program that are designed to help families and individuals use their capacities to maintain or attain self-sufficiency and to function as useful, productive individuals as fully as possible. The objectives of service are defined as:

4223.1 *Strengthening Family Life*

Strengthening family life means sustaining and increasing the ability of parents to carry their parental responsibilities in the care, protection, and support of their children; and to sustain and increase the capacities of children to carry their appropriate role in total family life, to the end that children may have a home life conducive to healthy physi-

cal, emotional, and social growth and development. Families have the right and the responsibility to provide for adequate health care, education, and vocational training in accordance with the capacities of their children; and to provide for their participation in community life.

Parents have the right to make decisions affecting them and the welfare of their children. Similarly children have the right to look to their parents for such decisions. These rights and responsibilities are not abridged lightly, and only by the courts when circumstances and conditions pose serious threats to the welfare of the children or reveal serious failure of the parents to provide adequate care and guidance for them. Strengthening family life relates to the family as a unit and to the role that each member plays within the family. The role that parents play and their personal needs and interests are basic considerations in services to strengthen family life.

4223.2 *Self-Support*

Self-support means the economic capacity to provide partially or fully an adequate standard of living for oneself and for dependent members of the family. The aim of services directed toward the self-support objective is to assist the individual to maintain or develop his skills and capacities and to use them for stable employment that is financially and personally rewarding. Under title IV, the legislation makes clear that the objective of self-support must be "consistent with the maintenance of continuing parental care and protection." While self-support is not a major program emphasis for the aged or children, services are included to older people who desire such help or to young persons to assist them to prepare for future employment.

4223.3 *Self-Care*

Self-care means the personal ability to meet any or all of the normal demands of everyday life without continuing help from others. The aim of services directed toward self-care is to assist the individual to use his full capacities for his own care, and to maintain participation in family life and relationships within the community.

## APPENDIX C

Ill. Rev. Stat. ch. 23 (1967);

§ 4-1.1. *Child Age Eligibility.* The child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. "Regular Attendance", as used in this Section means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status.

## APPENDIX D

Ill. Dept. of Public Aid Categorical Assistance Manual:

§ 150. *Age Requirements:*

A.D.C. Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)

1017 *Allowances For Education*

1017.2 *Education Beyond High School—Children Under Age 21*

A plan for education or vocational training in an accredited vocational or technical school or special training project is approved for the child under age 21 when:

Suitable employment depends on a short training program; or

A vocational or technical program of more than 1 year is approved by the regional office (Director of Field Operations, Cook County).

Special consideration is given to the child's desire for further training provided that his ability, aptitudes and school performance warrants such a vocational plan. Approval of a practical advisable plan is based on evaluation including but not limited to the following factors:

Present employability;

The time required for the training plan in relation to present employability;

Capacity to make productive use of added training;

The labor market in his field of interest;

Resources available for meeting part of the expense through scholarships, part-time employment, or family contributions;

The itemized amount of expense involved.

The assistance standard is used in budgeting the cost of shelter and items in the personal allowance for a recipient studying under an approved educational plan. Additional expenses required by the plan are allowed for:

*Transportation.* As needed and at the most reasonable cost. (Code 238 SC EX)

*Lunches.* An additional 15 cents per school day to supplement lunch taken from home; 45 cents per school day if lunch must be purchased. (Code 238 SC EX)

*Other Expenses.* Those required by the school including but not limited to tuition, fees, books and other school supplies. These allowances are issued by Form FA-13, Invoice Voucher, or by emergency check if it is necessary for the recipient to pay for the item. (Code 238 SC EX)

*Additional Allowance.* An additional allowance per month is budgeted to enable the individual to participate in school activities:

Under age 18 . . . . . $ 6.00
Age 18 and over . . . . 15.00 (Code 260 VOC TR)

On unusual items or expenses which exceed the assistance standard, the county department or regional office consults the Standards of Assistance Section (Home Economics Consultant in Cook County).

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

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**Nos. 5850, 6000**

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LOVERTA ALEXANDER, individually and on behalf of her minor son, JEROME ALEXANDER; and all other persons similarly situated,

*Plaintiffs-Appellants,*

and

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR,

*Intervening Plaintiffs- Appellants.*

vs.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid, and MAE WITHERS, Supervisor, Woodlawn District Office, Cook County Department of Public Aid,

*Defendants-Appellees.*

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**On Appeal from the United States District Court, Northern District of Illinois, Eastern Division**

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## BRIEF OF APPELLEES

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## OPINIONS BELOW

The opinion of the U.S. District Court, convening a three judge court, is reported at 314 F. Supp. 1078 (N.D. Ill. 1969). This opinion was handed down on March 28, 1969. (App. 36-41) The opinion and judgment of the three judge court, which dismissed the complaints, were entered on April 30, 1970, and are reported at 314 F. 2d 1082 (N.D. Ill. 1970) (App. 83-97). The order denying plaintiffs' motions to vacate the judgment and for reconsideration is unreported. (App. 103)

## JURISDICTION

This is adequately set forth in the Appellants' Briefs.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Most of these are adequately set forth in the Appellants' Briefs. However, in addition to those provisions relied upon by the appellants, the appellees have mentioned various statutory sections which are set forth in Appendix D.

## QUESTIONS PRESENTED

1) Whether Illinois and other states participating in the Aid to Families With Dependent Children Federal Program are required by the Supremacy Clause to extend benefits to the fullest extent possible under the Social Security Act, or whether Illinois may extend AFDC Benefits to one class of persons at a time as the availability of funds allows;

2) Whether the Illinois Public Aid Code's definition of a dependent child, which was adopted to substantially conform with the definition inserted into the Social Security Act by Congress in 1964, is irrational and discriminatory;

3) Whether the Illinois AFDC Program, which provides for aid to children between the ages of 18 and 21 who attend high school or vocational or technical school, but not to those who attend a college or university, violates the Equal Protection Clause of the Fourteenth Amendment.

## STATEMENT

This appeal arises out of a class action which was brought to challenge the validity of Section 4-1.1 of the Illinois Public Aid Code [Ill. Rev. Stat. ch. 23, § 4-1.1, (1969)] and Illinois Public Aid Regulation 150 issued pursuant thereto. The District Court found that the Complaint stated a claim under 42 U.S.C. § 1983 and that it was a proper class action. A three judge court was convened under 28 U.S.C. Sections 2281 and 2284. (App. 36-41) All parties moved for Summary Judgment based on various affidavits and the pleadings. (App. 50, 51, 54, 55, 63, 64, 72, 73, 81, 82)

Suit was originally brought by Loverta Alexander, individually and on behalf of her minor son, Jerome Alexander. (App. 9-14) The latter graduated from Chicago Vocational High School in the summer of 1968. (App. 110) Although he majored in machine shop in high school, he did not apply for such a job after high school. (App. 112) In September of 1968 he enrolled in the liberal arts curriculum at Wilson Junior College. (App. 114) During the

first semester he passed eleven hours and failed four hours. (App. 116) In the second semester he passed nine hours and failed three hours (App. 116), giving him a total of twenty credit hours for one year. When he finishes college he hopes to be a basketball coach or a draftsman, but he has not taken any drafting yet. (App. 120) From November to April he spends approximately three hours a day playing basketball. (App. 117) He would not accept a part time job, even if someone found it for him, because it would interfere with basketball and because he wants to make it into the pros. (App. 134, 138)

Until November 1, 1968, Loverta Alexander received Aid to Families with Dependent Children (hereafter AFDC), a Federally assisted welfare program administered by the Illinois Department of Public Aid, both for herself and on behalf of her minor son, Jerome. (App. 9, 10, 43)

On October 4, 1968, Defendant Mae Withers, supervisor of the Woodlawn District Office of the Cook County Department of Public Aid, ordered termination of AFDC benefits; termination was to be effective November 1, 1968. (App. 12) The basis for the action was Section 4-1.1 of the Illinois Public Aid Code[1] and Illinois Pub-

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1. Section 4-1.1 of the Illinois Public Aid Code, Ill. Rev. Stat., ch. 23, § 4-1.1 (1967) provides:

Child Age Eligibility. The child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. 'Regular Attendance', as used in this Section, means attendance full time during the regular terms of such schools or attendance part time during such regular terms as may be authorized by

lic Aid Regulation 150,[2] which provide in effect that children who have been deprived of parental support and who are between 18 and 21 years of age are eligible for AFDC only if enrolled in high school, vocational school or technical training school. Jerome Alexander, as a junior college student enrolled in a liberal arts course, was therefore not eligible. Since the time that AFDC benefits were terminated, Mrs. Alexander has been receiving state general assistance benefits. The difference between the AFDC benefits and the general assistance benefits amounts to $23.52 per month. Her son Jerome also receives OASDI benefits. (Appellants Alexander's Brief, p. 11) (App. 53)

This action was instituted on November 8, 1968, against Harold O. Swank, David L. Daniel and Mae Withers, who were or are the officials responsible for the administration of AFDC benefits in Illinois (App. 10, 11)[3], and on March 12, 1969, Georgia Townsend intervened as a plaintiff both individually and on behalf of her minor daughter Omega Minor, and as a member of the class described in the original Complaint filed by Loverta Alexander. (App. 21-35)

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rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status.

2. Illinois Public Aid Regulation 150 provides in part: Age Requirements—Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college).

3. In 1971 Harold O. Swank resigned and was replaced by Edward J. Weaver as Director of the Illinois Department of Public Aid.

Omega Minor, the daughter of Georgia Townsend, was a student at South East Junior College (App. 174), a tuition free (to city residents) junior college established by the Illinois Legislature. [Ill. Rev. Stat. ch. 122, Sections 13-12 et seq. (1969)] In high school she had been in the upper five percent of her class and was valedictorian at graduation. (App. 172) The Cook County Department of Public Aid suggested that she get a part-time job, but she never did. (App. 175) She did not work or go to summer school during the summers after she started at South East Junior College because, she said, she would spend most of the day and sometimes part of the evening studying what she had last year and what she anticipated taking next year. (App. 178, 179) She had been on probation three out of the six semesters that she was in school, and she has repeated courses two or three times. (App. 80, 185, 186) If she had been on probation twice in a row, she would have been dropped from school, but she was never on probation twice in a row. Most of the time she was only taking nine hours per semester, which meant that she went to school on Mondays, Wednesdays and Fridays but not on Tuesdays or Thursdays. (App. 185) After attending Junior College for three years, she had approximately forty credit hours, or approximately thirteen credits per year. (App. 183, 184) She has never registered for employment, and she would not take part-time employment even if it was offered to her because of her duties of taking care of her mother. (App. 175, 176, 189) Her mother has been furnished on three occasions with housekeepers paid by the Cook County Department of Public Aid, but Mrs. Townsend was not satisfied with any of them. (App. 163) She might have had her lawyer with her at the time that she registered for AFDC benefits, she could not remember. (App. 180)

Since the time that AFDC benefits were terminated, Mrs. Townsend has been receiving an Aid to the Disabled grant. Her daughter initially received a general assistance grant which was cancelled when she refused to seek employment of some kind. (App. 177)

After various procedural matters were resolved, both the Plaintiffs and the Defendants moved for Summary Judgment. (App. 50, 51, 54, 55, 63, 64, 72, 73, 81, 82) The three judge court, which had been convened under the authority of 28 U.S.C. Sections 2281 and 2284, held that Section 4-1.1 of the Illinois Public Aid Code [Ill. Rev. Stat. ch. 23, Section 4-1.1 (1969)] and Illinois Public Aid Regulation 150 were consistent with the Social Security Act and did not violate the Equal Protection Clause. (App. 83-97) Accordingly, Summary Judgment was entered for the Defendants and against the Plaintiffs on April 30, 1970.

Plaintiffs' Motions to vacate judgment and to reconsider (App. 98-102) were denied on June 12, 1970 (App. 103), and the Plaintiffs filed Notices of Appeal on July 14, 1970. (App. 105-107) This Court noted probable jurisdiction on February 22, 1971. (39 U.S.L.W. 3359)

## SUMMARY OF ARGUMENT

The definition of a "dependent child" which has been incorporated into the Illinois Public Aid Code was originally created by Congress in 1964. When Congress expanded the definition of dependent children in 1965, the State of Illinois was not able, because of its financial condition, to expand its AFDC program to the full extent permitted under Federal law. In choosing not to extend benefits to the maximum extent permissible under the Social Security Act, Illinois has acted in accordance with

the view expressed by Congress, that the welfare programs should be implemented as far as practicable under the conditions in each State.

The State classification which permits AFDC benefits to be extended to those who attend high school, technical or vocational schools, but not to those attending a college or university, is reasonable because there are substantial differences between the two classes created. Those attending a college or university have alternative benefits available which cannot be obtained by one attending a technical or vocational school. The latter class is in fact at a distinct disadvantage under Illinois law in obtaining an education, and the legislature must reasonably have considered the entire scheme of benefits available in creating the classification which is now challenged. In granting benefits to those attending vocational or technical schools, Illinois is helping those most in need. It is rational to give the limited funds available to those who are most in need, rather than covering a wider group of individuals with a lesser degree of benefits, especially when those who seek the benefits have many other substitute benefits available. The action which has been taken by the Illinois Legislature does not result in depriving minority children of a choice of education or in channelling minority children into an inferior type of education. Studies show that the greatest need in the next 10 years is not for college graduates, but rather for skilled technical workers, and a needy child's chances of employability are no better if he attends one to three years of college than if he attends a trade or vocational school. More importantly however, under the total scheme of Illinois laws, which the legislature is presumed to consider, benefits are equally available

to a minority child whether he chooses a trade or a profession. Illinois has alloted its limited AFDC benefits to those who are most in need of them, without in any way putting the college or university student at a disadvantage as far as total benefits are concerned. If the Illinois scheme is struck down, this Court will in fact be putting those needly children who desire a technical or vocational education at a distinct disadvantage.

Since the classification adopted by the State of Illinois is reasonable, and since the terminology used is adequately defined and subject to judicial supervision, there is no violation of the Due Process Clause of the United States Constitution.

Congress has consistently manifested that the States are free to adopt either a portion or all of the AFDC program, the outer limits of which are defined in 42 U.S.C. Section 606(a). Like numerous other states, Illinois has not had the funds available to participate in the full Federal program. This lack of total participation is consistent with Constitutional principles which allow a State to attack as much of a particular problem as its finances allow. If the appellants' arguments are accepted, Illinois is only one of numerous States which will be affected: Congress has before it legislation which would accomplish the result sought by the appellants, but has refused to pass that legislation. In the absence of a clear manifestation by Congress that the result urged by appellants is desired, this Court should not hold that the Supremacy Clause requires nationwide unformity in the A.F.D.C. program.

## ARGUMENT

### I.

### THE CLASSIFICATION PRESENTLY CONTAINED IN SECTION 4-1.1 OF THE ILLINOIS PUBLIC AID CODE [ILL. REV. STAT. CH. 23, SECTION 4-1.1 (1969)], WHICH PROVIDES THAT AFDC BENEFITS CAN BE GRANTED TO CHILDREN BETWEEN THE AGES OF 18 AND 21 IF THEY ARE IN REGULAR ATTENDANCE IN HIGH SCHOOL OR IN A VOCATIONAL OR TECHNICAL TRAINING SCHOOL, WAS A CLASSIFICATION ORIGINALLY CREATED BY CONGRESS IN THE SOCIAL SECURITY ACT, AND THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT DOES NOT REQUIRE THAT THE STATE OF ILLINOIS AND OTHER STATES HAVING SIMILAR LAWS EXTEND AFDC BENEFITS TO THE FULLEST EXTENT POSSIBLE UNDER THE PRESENT SOCIAL SECURITY ACT.

Section 4-1.1 of the Illinois Public Aid Code, which is entitled "Child Age Eligibility", provides that the "child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school" in order to receive benefits. [Ill. Rev. Stat. ch. 23, Section 4-1.1 (1969)] The Appellees herein concede that the Illinois Statute is not as broad as 42 U.S.C. Section 606(a), which in part defines a "dependent child" as a needy child who is under the age of eighteen or "under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college or university, or regularly

attending a course of vocational or technical training designed to fit him for gainful employment." The issue before this Court is whether this discrepancy in definitions violates the Equal Protection Clause of the United States Constitution. The appellees submit that there is no violation.

## A.

**The classification contained in Section 4-1.1 of the Illinois Public Aid Code is essentially the same as the classification created by Congress in Section 606(a) of the 1964 Social Security Act.**

It is contended by the Appellants, who were denied a continuation of AFDC benefits after they reached age 18, that Illinois has created an invidious classification which discriminates against them in violation of the Equal Protection Clause of the United States Constitution. The truth of the matter is that Illinois never created the classification. The classification was originally created by Congress, and Illinois is involved in this suit simply because its finances do not allow it to take advantage of Congress' broadening of the Social Security Act in 1965 to extend benefits to children over 18 who are enrolled in a college or university.

Prior to 1964, the Illinois Public Aid Code provided that benefits would be extended to a "dependent child," who was defined in part as:

> "a needy child under age 18 who has been deprived, in whole or in part, of the support or care necessary to provide him with a standard of living consistent with decency and health. . . ." [Ill. Rev. Stat. ch. 23, Section 601 (1963)]

Illinois' definition was essentially the same as the Congressional definition of "dependent child" contained in 42 U.S.C. Section 606(a), which included only a needy child "under the age of 18." In 1964, however, Section 606(a)(2) was amended by Congress to include a needy child—

> "(A) Under the age of eighteen or (B) under the age of twenty-one and (as determined in accordance with standards prescribed by the Secretary) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." [Pub. L. 88-641, 78 Stat. 185, Sess. 2 (1964)]

Illinois then changed its Public Aid Code to define a "dependent child" in part as:

> "'a needy child under 18, or age 18 or over but under age 20 if he is in regular attendance in high school or in a vocational or technical training school. . . ." [Ill. Rev. Stat. ch. 23, Section 601 (1965)]

It is apparent from comparing the Social Security Act, as it read in 1964, with the Illinois Public Aid Code, that they are substantially identical as far as the educational requirement. If the appellants' argument is accepted by this Court, this means that Illinois ran afoul of the Equal Protection Clause by extending public aid benefits to a class created by Congress, i.e., children over 18 who were attending vocational or technical school. While the appellees realize that Congress cannot authorize the States to violate the Equal Protection Clause [*Shapiro* v. *Thompson*, 394 U.S. 618, 641 (1969)], the fact that two legislative bodies (Congress and the Illinois Legislature) made the same classification should provide a substantial showing of reasonableness.

If Illinois did not run afoul of the Equal Protection Clause by adopting Congress' definition, the only other possibility is that a violation arose in 1965 or shortly thereafter, when Congress expanded the scope of federal participation in AFDC plans by amending 42 U.S.C. Section 606(a)(2) to include children, 18 to 21 years old, who were in college or in a university. The logical extension of this argument is that every time Congress changes its definition of a "dependent child", all States that do not immediately change their definition are in violation of the Equal Protection Clause. Such a conclusion runs contrary to the well accepted principle that a State statute is not invalid merely because it does not go as far as it might have. [*E.g., Seagram & Sons* v. *Hostetter,* 384 U.S. 35, 50 (1966)].

B.

**The Equal Protection Clause does not require that Illinois choose between extending AFDC benefits to all needy children between the ages of 18 and 21 or not extending benefits to anyone over age 18, and by extending benefits to needy children between the ages of 18 and 21 who are attending a vocational or technical school, Illinois has acted constitutionally by reasonably attacking as much of the problem as its finances would allow.**

Under the federal definition of a "dependent child", which is contained in 42 U.S.C. Section 606(a), federal participation in AFDC programs has been extended to include not only children between the ages of 18 and 21 who are attending vocational or technical schools, but also those children who are attending a college or university. Illinois has not yet extended welfare benefits to children over 18 who are in attendance at a college or university,

and the pertinent issue before this Court is whether Illinois has offended the Equal Protection Clause of the Federal Constitution by its financial inability to grant benefits to the full extent permissible under the Social Security Act. The appellees submit that the question must be answered in the negative.

This Court has repeatedly said that the States have considerable leeway in allocating their AFDC resources [Eg., *King* v. *Smith,* 392 U.S. 309, 318, 20 L. ed 2d 1118, 88 S. Ct. 2128, 2134 (1968)], and a State may legitimately attempt to limit its expenditures for public assistance or public education or any other program as long as it does not accomplish such purpose by drawing invidious distinctions between classes of its citizens. [*Shapiro* v. *Thompson,* 394 U.S. 618, 633 (1969)] In determining whether a classification is invidious, one must keep in mind that the Equal Protection Clause does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all. It is enough that the State's action is rationably based [*Dandridge* v. *Williams,* 397 U.S. 471, 486, 487 (1970)], and a classification does not violate one's right to equal protection of the laws unless it is palpably arbitrary. [*Snell* v. *Wyman,* 281 F. Supp. 853, 865 (S.D. N.Y. 1968)], *aff'd,* 393 U.S. 323 (1969). A statute is not invalid under the Constitution because it might have gone further than it did [*Roschen* v. *Ward,* 279 U.S., 337, 339 (1929); *Russo* v. *Shapiro,* 309 F. Supp. 385, 394 (D. Conn. 1969)] The question is not whether this Court would act the same way if it were sitting as a legislature, but whether there is a rational basis for the classification which has been made. [See *Dandridge* v. *Williams,* 397 U.S. 471, 487 (1970); *Russo* v. *Shapiro,* 309 F. Supp. 385, 392, 393 (D. Conn. 1969)] One

who attacks the classification has the burden of proving that the statute is unreasonable, and the statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. [*Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 426 (1961)] In determining whether the Illinois Public Aid Code and Regulations violate the Equal Protection Clause, we must consider the facts and circumstances behind the law; the interests which Illinois is protecting, and the interests of those who are disadvantaged by the classification. [*Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968)] With the foregoing principles in mind, let us turn to an analysis of the interests which the State of Illinois is protecting.

By the policy which it is presently carrying out, the State of Illinois is protecting its fiscal integrity, promoting employment, and is guarding against adverse reactions by its working poor. All of these have been recognized as legitimate State concerns [*Dandridge* v. *Williams*, 397 U.S. 471, 486 (1970)], and the Illinois plan is reasonably related to accomplishing all those goals.

Illinois' financial stability is aided by virtue of the fact that AFDC benefits are generally required for shorter periods of time if a child is in vocational or technical school than if the child were in a college or university. It is a matter of common knowledge that vocational and technical schools are generally two years or less, as opposed to the normal four year span in a college or university, which means that the State of Illinois is providing AFDC benefits for a shorter period of time. While such is a matter of common knowledge, the appellees have, for the Court's convenience, listed in an Appendix the

Chicago area vocational and technical schools, as well as the courses given and the length thereof.*

Illinois' Public Aid Code, as it relates to AFDC, also promotes employability, and while self-support might not be a major program emphasis for youths while they are in school, both Congress and HEW have repeatedly stressed their concern that recipients become self-supporting as soon as possible. For example, 42 U.S.C. Section 602(a)(14), requires every State to set up a program "in order to assist such child, relative and individual to attain or retain capability for self support. . . ." Similarly, the next section, Section 602(a)(15), requires all States to adopt a program with the objective of assuring, to the maximum extent possible, that recipients "will enter the labor force and accept employment so that they will become self sufficient." Section 602(a)(19) requires that the States adopt a provision for AFDC recipients over age sixteen to be referred to work incentive programs if they are not in school. Congress has also provided in Section 602(a)(7)(A) that income earned by children over eighteen and under twenty-one and in school should be disregarded in determining "need." While the appellants see this Section as an incentive for children to remain in school, the appellees interpret the Section as a Congressional incentive for chil-

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* The list was compiled from catalogues sent in response to appellees' calls to Chicago area vocational and technical schools; the list is contained in Appendix A.

The House Republican Task Force on Education and Training reported that "the course length in proprietary schools is very short, generally falling between four months to a year. The same course in a community college would take two years and mean a loss of possible earnings during the additional period." Vol. 116, Congressional Record, Aug. 17, 1970.

dren in school to work. All in all, a review of the Social Security Act shows Congress' concern that recipients should become self sufficient and self employable. The primary purpose of welfare legislation is to provide temporary assistance and to make recipients employable and self sufficient as soon as possible so that they may develop pride and feel that they are an important part of our society.

The foregoing conclusion is reinforced by the utterances of HEW, which is entrusted with the primary responsibility of interpreting the Social Security Act; its regulations speak of the objective of this legislation as being the "increasing [of] a young person's employability . . .", [Handbook of Public Assistance Administration, "Greensheets", G3220, Brief for Appellant Townsend, p. 11a] In Section 4210, which is entitled "Purpose of Legislation", HEW states that the first broad purpose of the Social Security Act is to "(1) clarify and emphasize the national interest and responsibility in the further development of services with emphasis on strengthening family life, social rehabilitation, *prevention of dependence, self support,* and self care." (Brief for Appellant Townsend, p. 16a) (Emphasis added)

The Illinois Legislature has also taken a position consistent with that of Congress and HEW. Section 1.1 of the Illinois Public Aid Code provides that the Department of Public Aid shall establish such standards "as will encourage and assist applicants and recipients . . . to develop their self reliance and realize their capabilities for self care, *self support,* and responsible citizenship. [Ill. Rev. Stat. ch. 23, § 1-1 (1969)] (Emphasis added)

To summarize, Congress, HEW and Illinois have always expressed the view that self support was a primary con-

sideration in the public assistance programs. The course of action which Illinois has taken works towards achieving that goal. By extending benefits to those children over eighteen who are attending a vocational or technical school, Illinois emphasizes specific employment objectives which are attainable within a period of approximately two years or less. The lower federal courts have recognized that a State may effectuate the goal of self support and independence by structuring its AFDC program to maximize incentives as an alternative to welfare. [*Henry* v. *Betit*, 323 F. Supp. 418, 424 (D. Alaska 1971)]

Aside from the fact that the Illinois policy protects the public fisc and promotes employability, it can also be assumed that the Illinois Legislature has in mind a possible effect on the working poor if benefits are extended as far as allowable under the Federal law. This again is a legitimate State concern. [*Cf. Dandridge* v. *Williams*, 397 U.S. 471, 486 (1970)]. While education is important, it does not follow that one should be entitled to support while attending college, or that one should be entitled to attend college without personal sacrifice. The record shows that Omega Minor, like her mother before her,* has not

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* The "tragic cycle of poverty" that the appellants make reference to is not necessarily broken by education alone, without some training as to the importance of work habits. The National Advisory Council of Vocational Education, a body of 21 experts appointed by the President, stressed this point by recommending that part time employment should be emphasized. In making this recommendation, the Council stated:

> "Many children learn these attitudes [which add up to employability] at home. A father who is regularly employed and displays a responsible attitude toward his job is likely to teach employability to his children

worked a day in her life (App. 155, 175, 176, 186), and this is a luxury which is shared by very few of those who wish to attend a college or university. As was noted by one of our lower federal courts, "AFDC was not designed to provide a guaranteed annual income for those who are capable of gainful employment." [*Henry* v. *Betit*, 323 F. Supp. 418, 425 (D. Alaska 1971)] While appellant will undoubtedly argue that Miss Omega's failure to work was because of concern for her mother,* the State can still be generally concerned about the effect on children of the working poor, who are forced to work part time in order to attend college, upon seeing AFDC being granted to someone who does not wish to work or to someone else who feels that basketball is more important than helping put himself through school.

Lastly, some consideration should be given the fact that a recipient who attends a technical or vocational school can be reasonably assured of becoming a draftsman, a

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without much help from the school. A child who is brought up in a family in which there is no employed adult, or in which observed employment is sporadic and casual, is not likely to learn at home how to hold a job. For such a child, employability is as important a part of the school curriculum as reading.

A good way to teach employability where it is not an integral part of everyday life, is through employment."

Third Report of the National Advisory Council on Vocational Education, July 10, 1970, pp. 4, 5.

* Mrs. Townsend has been provided with housekeepers on three separate occasions, but she has never been happy with any of them. (App. 163) These were paid by the Cook County Department of Public Aid.

dental assistant, an auto mechanic, a court reporter, a computer operator, a clerk-typist, an electronics technician, a medical assistant, or a key-punch operator while the State of Illinois is still providing AFDC benefits. On the other hand, a student will very seldom complete the required four years of college prior to the time that he reaches age 21. Various studies which have dealt with the disgruntled members of our society have concluded that the attitude of such a person is often a result of his frustration, and who can say that it is more frustrating to a student to be denied AFDC benefits upon leaving high school than to be granted AFDC benefits which are terminated when the recipient still has a year or two to go to attain his goal. It would seem to be in the State's interest that students complete the goal they have undertaken.

Summarizing, the classification originally established by Congress and later adopted by Illinois in its Public Aid Code protects the public fisc, encourages employability and self support, thereby promoting self pride, and seeks to minimize friction between AFDC recipients and the children of the working poor who attend college. All of these are legitimate State goals.

It is contended, however, that the protection of public funds cannot be achieved by an invidious discrimination, and that the classification contained in the Illinois Public Aid Code is invidious because the profession of an elementary school teacher is better than the professions resulting from vocational and technical training. Before that point is considered, it should be noted that the classification in the Public Aid Code of Illinois does not deny anyone the fundamental right to an education. The fact that Omega Minor will graduate in June of 1972 shows that she has not been deprived of her right to an education,

and the failure of Illinois to provide AFDC benefits must be considered in conjunction with the wide range of benefits provided by Illinois for the financially needy to help them obtain a college education. This will be considered at length shortly.

But returning to Appellant's argument, it is true generally that a doctorate is better than a masters degree, a masters degree better than a college degree, and a college degree better than a degree from a vocational or technical school.* But that is not the question. Poverty is un-

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* There is, however, evidence to the contrary. The Center for Vocational and Technical Education, located at Ohio State University, has published a pamphlet entitled *Review and Synthesis of Research on The Placement and Follow-up of Vocational Education Students* (Research Series No. 49, VT 010175) One of the studies reviewed was by Richard W. Whinfield, who compared in 1969 the occupational status and earnings of 1961 and 1964 graduates of two year technical institute programs with those of graduates of two-year University academic programs in Kenosha and Wausau, Wisconsin. His findings indicate that the level of occupation and earnings may be associated more with completion of a program than with the type of program completed. The technical program students averaged somewhat lower in usual measures of scholastic aptitude and achievement, but technical program graduates were achieving at least equally in the world of work.

Another study reviewed was by Kenneth J. Little, who conducted a 1967 state-wide follow-up study of the occupations of the 1957 male secondary school graduates of Wisconsin. The graduates were separated into three groups: (a) those who attended college; (b) those who attended a post-secondary vocational or technical school; (c) those who attended no post-secondary school. The data showed that college students who had ranked in the top tenth of their class pulled away from other college stu-

fortunate, but it is not limited to only those who have been deprived of a parent. The children of those working for minimum wages have similar problems, and while one always dreams of the utopia of helping all impoverished get a higher education, the realities of fisc in welfare programs require that we settle for helping the most needy of the total needy. In establishing the welfare programs, Congress realized that the States would not always have sufficient monies to participate in the full extent of the federal program, so it provided that the various programs should be implemented "as far as practicable under conditions in every State." [42 U.S.C. Section 601] Illinois, like many other states, finds itself in a financial crisis. The welfare appropriations for the fiscal year 1970 jumped 22% over the previous year. Chicago Tribune, Aug. 11, 1969, Section 1, p. 5 Public Aid officials have been publicly quoted as saying that if the current public aid deficit is not met in some way, the only alternative will be to cut basic grants. (Chicago Sun-Times, Sunday, Oct. 10, 1971, Viewpoint, an Article by Patricia Koval entitled "Can Ogilvie End Welfare Crisis.") Governor Ogilvie announced on October 5 of this year that the State had to meet a deficit of 107 million in order to fund the welfare programs for this year, and that welfare money will run out completely in May 1972 if the deficit is not met in some way.

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dents in reaching high prestige occupations. Students who attended college but did not graduate, however, attained occupations of the same type and level much like those attained by the middle half of the other two groups.

Other independent studies which are mentioned in the footnote on page 32 reached conclusions that vocational and technical graduates often fared better than academic graduates.

The question really is, then, whether Illinois has made an unreasonable determination when it decided that its limited funds were best utilized for those who were attending high school, vocational or technical school. This decision is not unreasonable for a variety of reasons.

First of all, the classification is reasonable because there are significant differences between those who are presently receiving AFDC benefits under the Public Aid Code and those in the class represented by the plaintiffs. There can be no doubt that a substantial difference exists between the plaintiffs, who have high school degrees, and a recipient who is attending high school, so the difference there clearly is reasonable. Furthermore, those attending vocational or technical schools are generally not required to have a high school degree as an absolute necessity (See Appendix A), while a high school degree is required by colleges and universities. It is therefore very reasonable to assume that the class of children to whom Illinois is granting AFDC benefits is a significantly different group than the class represented by the plaintiffs. Although there may be some overlap between the two classes, the Constitution does not require that classifications be made with mathematical nicety. [*Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970)] As this Court noted, "[t]he problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical as it may be, and unscientific." *Metropolis Theater Company* v. *City of Chicago*, 228 U.S. 61, 69-70 (1913)

Secondly, it is not arbitrary to grant AFDC benefits to those enrolled in a technical or vocational school, as opposed to those attending a college or university, because the latter group has a wide range of benefits which are not fully available to the former group. For example,

under the Illinois Public Aid Code there are twelve college scholarships provided for high school students receiving AFDC benefits. [Ill. Rev. Stat. ch. 23, Section 4-3 (1969)] Under Section 4-3 the Illinois Department of Public Aid may, not only in the academic year but also during summer school, make grants to cover school expenses and costs of maintenance which are not covered by the scholarship. This scholarship remains in force for four consecutive years of study, even though the student reaches the age of 21 and would therefore be ineligible for a regular AFDC grant. Thus, a needy child who is attending a college can keep that scholarship and the supplemental grants beyond age 21, while those attending vocational or technical school are eligible for AFDC only to age 21. But said scholarships are only a part of the benefits available to those attending a college or university but not available to those attending a technical or vocational school.

In 1957 Illinois passed legislation authorizing the Illinois State Scholarship Commission, a governor-appointed body of seven persons. This commission was created because of Illinois' dedication to the principles and purposes which are quoted in Appellant Townsend's Brief. (pp. 23, 24) Illinois' dedication to those principles, however, should be considered as part of the entire picture. Illinois has made available to financially deprived students, through the Illinois State Scholarship Commission, non-repayable competitive scholarships, non-competitive grants based on need alone, and also educational loans guaranteed by the State of Illinois. [Ill. Rev. Stat. ch. 122, Section 30-15 to 30-15.13 (1969)] Such scholarships and outright grants are available, however, to only those who have successfully completed high school and are enrolled in a public or private, not for profit, college having at least a two

year program leading to a degree. [Ill. Rev. Stat. ch. 122, Sections 30-15.2, 30-15.5, 30-15.7a (1969)] Between 1958 and 1970 the Illinois State Scholarship Commission has made 136,250 awards in a total dollar amount of $79,350,000. In the scholastic year 1969-1970, the commission paid out $15,825,000 in outright grants and $10,375,000 in scholarships. These scholarships, grants and guaranteed loans are especially designed for the financially needy [Illinois State Scholarship Commision Report, May, 1970, p. 1], and they are not to be confused with the wide range of scholarships awarded specifically to those who indicate their intention to enter the teaching profession. [Ill. Rev. Stat. ch. 122, §§ 30-1, 30-2 (1969)]

In addition to the scholarships available under the Public Aid Code, and in addition to the grants, scholarship and guaranteed loans previously noted, there is also a full range of federal and other benefits available to college and university students. For example, although financial need is not taken into account in determining the winners of the National Merit Scholarship Awards, financial need is used as a criteria in awarding the stipend to the winners. There is also a separate scholarship competition for Negro students which is called the National Achievement Scholarship Program for Outstanding Negro Students. This was created in 1964 by the Ford Foundation, and there are one-time non-renewable $1000 scholarships and also four year achievement scholarships with a stipend based on individual needs.

The same disparity which exists under state grants and private grants, as to the benefits available to one attending a college or university in opposition to one attending a technical or vocational school, is true under federal law. For example, the federal government invests

$14.00 in the nation's universities for every $1.00 it invests in the nation's vocational educational programs. [1969 Annual Report of the National Advisory Council of Vocational Education, quoted by Representative John Dellenbach, Vol. 116 of the Congressional Record, Wednesday, Aug. 12, 1970] The fact that these additional benefits are available to a needy child attending a college or university would of course not cure a violation of the Equal Protection Clause, but it does demonstrate that Illinois has made a reasonable choice in designating those attending vocational and technical schools as being more in need of help than those attending colleges or universities, and this of course goes to the question of whether or not there is a violation of Equal Protection in the first place.

Despite appellants' protestations to the contrary, when they graduated from high school and enrolled in free junior colleges, instead of in "X" vocational schools, they did become less needy than those that chose the vocational schools. They had reached an age where they were old enough to work, they were now entitled to apply for and receive non-competitive grants and guaranteed loans, and they were not paying tuition as are generally those who are attending a vocational or technical school.* This type of decision, as to who is needy, has always been a matter properly left to the States. [*King* v. *Smith,* 392 U.S. 309, 318, fn. 14 (1968)] The State is not obligated by the Fed-

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*"Tuition charges [in proprietary vocational schools] range anywhere from $100 to $4500 per course; the average tuition is approximately $850 to $900 annually." Report on Proprietary Vocational Schools by the House Republican Task Force on Education and Training, Vol. 116, Congressional Record, Aug. 12, 1970.

eral Constitution to remedy every social malady [See *Williams* v. *Page,* 309 F. Supp. 814, 816 (N.D. Ill. 1970)], and the State of Illinois is not responsible for the fact that neither of the plaintiffs ever bothered to apply for the scholarships and grants which they might have obtained. (App. 114, 173-175)

As was noted earlier, Illinois has limited funds available at the present. It has made a determination that its limited funds can best be utilized by granting them, which are minimum at best, to an 18 year old who probably does not have a high school degree so that the recipient will be able to obtain employment at age 18 or 19 or possibly 20 as a clerk, draftsman, dental assistant, electronics technician, programmer, auto mechanic, court reporter, computer technician, clerk-typist, key-punch operator or secretary. It cannot be said that spending funds for such a purpose is less worthy than providing welfare-benefits for Jerome Alexander, who has a high school diploma, so that he can more easily spend two years attending school and working to attain his goal of being a pro-basketball player or coach. That is not to say that a computer technician, secretary or auto mechanic is a more worthy profession than a basketball coach or a school teacher, but the point simply is that under Illinois' program, at the end of a year or possibly two years, a recipient who may be a high school dropout finds himself in an employable situation where he can become self-sufficient, develop pride and a sense of identity. As the Court noted in *McClellan* v. *Shapiro,*

> "While education plays a part in preparing young people for a place in the work of our society, it is not irrational for the State to refuse to maintain the next generation of workers in this state of dependence beyond the age of 19. Children do grow up and

become self supporting." [315 F. Supp. 484, 493 (D. Conn. 1970)]

It can hardly be said that Illinois' determination — that its interests are better served by paying AFDC benefits for a year or two while a recipient becomes an electronics technician, architectural engineering technician, computer technician or the like, as opposed to paying AFDC benefits for three years in order to enable a recipient to finish two or three years towards his four-year goal of becoming a pro-basketball player — has been an arbitrary one. Nor can it be said to be a wiser policy to cut the AFDC benefits, which are minimum now, being given to non-high school graduates attending vocational or technical schools so that they might be shared by Miss Minor, who was her high school valedictorian and who might have, but never bothered to, apply for the scholarships and supplemental grants available to a college or university student.

Thus far the appellees have directed their arguments towards proving that there are identifiable differences between the two groups which have been created, and that Illinois has acted rationally in choosing to aid one group rather than the other. Appellees also submit that Illinois' course of action does not place the poor at a great disadvantage. Appellants' arguments to the contrary are based on the principle that a college education is *per se* better than vocational and technical education* and upon certain

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* Appellants Townsend and Minor quote Special Labor Force Report No. 122, *Education of Adult Workers: Projections to* 1985 for the thought that a formal education is necessary for a job applicant to get equal consideration for a position. (Brief, pp. 18, 19, fn. 10) However, they

misleading graphs and statistics. The graph shown by the appellants Alexander (Brief, p. 30), which purports to show that the classification in the Illinois Public Aid Code is channelling recipients into high unemployment areas, is fatally deficient in several respects.

First of all, while the Special Labor Report does not define its terms, it is hardly likely that a clerk, draftsman, dental assistant, electronics technician, programmer, auto mechanic, court reporter, computer operator, clerk-typist, body and fender repairman or a secretary would be classified as a laborer. Secondly, the statistics were compiled as of 1968, and they completely ignore that in the last three years there has been an ever-increasing demand for more trained and skilled workers. The situation which exists

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should have continued a few more lines to the conclusion reached:

> "Excessive reliance upon formal education as a requisite for acceptance into the world of work is not only inherently unjust to the millions of less educated workers and potential workers who possess the need, desire, and basic competence to perform useful work; *it is also unrealistic, given the nature of many of the jobs which need to be filled.* The real needs of employees can best be met by a selective process which ensures an optimal matching of jobs and workers." (pp. 49, 51) (Emphasis added)

The Special Labor Force Report was making the same point as was U.S. Representative John Dellenback, Chairman of the House Republican Task Force on Education and Training, when he pointed out that (1) in the 1980's, fewer than 20% of the job opportunities will require a four year collegs degree, and (2) the "most pressing manpower needs in the 1970's will come in the subbaccalaureate skilled, technical, clerical, and paraprofessional occupations." (Vol. 116, Congressional Record, August 12, 1970)

now was noted by Representative John Dellenbach of Oregon, the Chairman of the House Republican Task Force on Education and Training:

> "The Labor Department, forecasting the employment situation for the 70's, estimated that the demand for technical workers will increase by about forty-five percent — twice as fast as the demand for all workers; that the demand for white collar workers will increase by about fifty percent — technological advances in computers will not solve clerical shortages, and the shortages of engineering graduates will require continued upgrading of skilled technicians. While we will be short on the trained skilled workers we need, we will have a rough overall balance between the supply and demand for college educated personnel. Clearly, therefore, our most pressing manpower needs in the 1970's will come in the subbaccalaureate skilled, technical, clerical and paraprofessional occupations." (Vol. 116, Congressional Record, Wednesday, Aug. 2, 1970)

This shift in manpower needs over the past few years is such common knowledge that it was recently the subject of a newspaper article in the Wall Street Journal. The article, which is set forth in Appendix B for the Court's convenience, notes that many students are dropping out of college and enrolling in vocational schools in order to improve their prospects for obtaining a job.

In striking contrast to the increasing demand for skilled craftsmen and technicians is the growing surplus of teachers, the profession which Miss Minor hopes to enter. This surplus is strikingly illustrated in a graph contained in a recent article by William S. Grayfield, Assistant Director of the National Education Association Research Division.*

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*The article is reproduced in total in Appendix C to this Brief.

There is one final point that should be made with regard to appellants Alexander's use of Chart I on page 31 of their Brief. The argument based on that Chart is completely erroneous because the Table has been inadvertently misread, and the statistics actually show that *there is absolutely no job advantage, as far as unemployment rates, unless four years of college are completed.* In order to see the Appellants' mistake, reference must be made to the Table which precedes the Table used. Table K is on the same page and deals with the same time (March, 1970), but the unemployment rates are classified by age and sex rather than by age and color. This Table shows:

PERCENT OF LABOR FORCE UNEMPLOYED

| Years of school completed and sex | Total, 18 yrs. old and over |
|---|---|
| Both Sexes | |
| Total | 4.2 |
| High School: 4 yrs. | 3.9 |
| College: 1 to 3 yrs. | 3.9 |
| College: 4 yrs. or more | 1.5 |

U.S. Bureau of Labor Statistics, Special Labor Force Report 125, "Educational Attainment of Workers: March 1969, 1970" Table K (abridged)

From a comparison of the two Tables, appellants' mistake is obvious. What appellants classify as "College: 1 year or more" includes not only those with 1 to 3 years of college, but those with college training that may include a doctorate. The fact of the matter is that high school graduates have exactly the same unemployment rate as

those with from 1 to 3 years of college. Furthermore, those who have vocational training in addition to a high school degree may very well have lower unemployment rates than the worker with some college training. There is some evidence to support this conclusion.*

In conclusion, the appellees do not say that the Illinois classification is the most wise, or that it best fulfills the relevant social and economic objectives that Illinois might ideally espouse, or that a more just humane system could not be devised. However, conflicting claims of intelligence can be raised as to almost every measure, certainly including the classification now before this Court. But such conflicting claims are not sufficient to void a State statute. The State is required only to classify in a rational man-

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*The Center for Vocational and Technical Education (Ohio State University), in its pamphlet Research Series No. 49, reviews a project by Max Eninger entitled *The Process and Product of Trade and Industry High School Level Vocational Education in the United States.* Among the findings reached were:

1) Starting salaries obtained by trade and industrial graduates depended on local labor markets, but were not greatly different from starting salaries of a comparison group of graduates who had academic majors.

2) Two years after graduation the graduates had experienced a 35% increase in mean hourly rate and were being paid substantially higher rates than the academic graduates with whom they were compared.

3) The graduates in related occupations reported a higher degree of job satisfaction than the academic graduates.

4) Graduates placed in jobs related to their training surpassed the academic majors on all measures of employment security tested.

ner, and this it has done. What this Court said in *Dandridge* v. *Williams* is directly applicable:

> "the intractable economic, social and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration. [Citation omitted] But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." [397 U.S. 487]

## II.

## THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT IS NOT OFFENDED BY VIRTUE OF THE FACT THAT THE ILLINOIS LEGISLATURE DID NOT DEFINE THE TERMINOLOGY "VOCATIONAL OR TECHNICAL TRAINING SCHOOL" WHICH IS CONTAINED IN THE ILLINOIS PUBLIC AID CODE.

The Illinois Legislature's use of the terminology "vocational or technical training school", to designate one of the requirements for AFDC benefits, is neither vague nor arbitrary so as to violate the Due Process Clause of the Fourteenth Amendment. If any caseworker is unsure as to what constitutes a "vocational or technical training school", he need only check the Illinois statutes which define such schools. [Smith Hurd Ill. Annotated Stat. ch. 144, Section 136 (1971 Supplement)] If the applicant for aid feels that the caseworker is mistaken, the applicant may appeal to the Illinois Department of Public Aid. Upon appeal the applicant is entitled to appear in person and be represented by counsel. [Ill. Rev. Stat. ch. 23. Sec-

tions 11-8, 11-8.1 (1969)] In case of an adverse decision, the applicant then has the right to judicial review. [Section 11-8.7] Thus there is no violation of federal due process. [See *Snell* v. *Wyman*, 281 F. Supp. 853, 864, 865 (S.D. N.Y. 1968), *aff'd*, 393 U.S. 323 (1969)] Apparently neither of the appellants contended in the proceedings below that they were entitled to AFDC benefits because they were attending a "vocational school."

Nor is the classification so arbitrary as to constitute a violation of the Due Process Clause of the Fourteenth Amendment. The statutory sections relied upon by the appellants Townsend and Minor to show arbitrariness are those which authorize school boards to enter into agreements with junior colleges for the purpose of providing vocational training of students in the 11th and 12th grades, and these sections expressly provide that participation in the program "is accorded the same credit towards a high school diploma as time spent in other courses." [Ill. Rev. Stat. ch. 122, Section 10-22.20a (1969)] Children attending such training would then come within the Illinois definition of a "dependent child", in that they are the same as in regular attendance in a high school. These statutory sections mentioned by the appellants again point up the fact that the Illinois Legislature meant to, and did, deal with an entirely different class of individuals than those represented by the appellants, who had high school diplomas and who were able to get into a college or university. The classification made by the Illinois Legislature is not so arbitrary as to violate the Due Process Clause. [See *Snell* v. *Wyman*, 281 F. Supp. 853, 861-863 (S.D. N.Y. 1968), *aff'd*, 393 U.S. 323 (1969); *Shapiro* v. *Thompson*, 394 U.S. 618, 662 (1969) (Dissenting opinion of Justice Harlan)]

## III.

## BOTH CONGRESS AND THE DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, THE ADMINISTRATIVE BODY WHICH HAS BEEN ENTRUSTED WITH THE DUTY OF INTERPRETING THE SOCIAL SECURITY ACT, HAVE CONSISTENTLY INDICATED THAT SECTION 606(a)(2) OF THE SOCIAL SECURITY ACT (42 U.S.C.A.) — WHICH DEFINES A "DEPENDENT CHILD" FOR PURPOSES OF FEDERAL PARTICIPATION AS A NEEDY CHILD REGULARLY ATTENDING A SCHOOL, COLLEGE OR UNIVERSITY OR REGULARLY ATTENDING A COURSE OF VOCATIONAL OR TECHNICAL TRAINING DESIGNED TO FIT HIM FOR GAINFUL EMPLOYMENT — IS OPTIONAL AND DISCRETIONARY WITH THE STATES, AND THE SUPREMACY CLAUSE DOES NOT REQUIRE ILLINOIS AND THE OTHER STATES HAVING LAWS SIMILAR TO ILLINOIS TO EXTEND BENEFITS TO THE MAXIMUM EXTENT ALLOWABLE UNDER THE SOCIAL SECURITY LAW.

### A.

**Both Congress and the Department of Health, Education and Welfare, which has the responsibility under the law of interpreting the Social Security Act, have consistently recognized that 42 U.S.C. Section 606(a) is merely discretionary and not mandatory.**

The legislative history of 42 U.S.C. Section 606(a) is set forth in a scholarly manner in the Brief for the United States as amicus curiae (pages 12-21), and the Appellees will not burden this Court by repeating that Argument. Nonetheless, the Appellees would like to briefly review some of the quotes contained in the Appellants' own Briefs

to show that Congress always intended for the coverage contained in Section 606(a) to be discretionary, not mandatory.

For example, in 1940 Congress raised the age limit for federal grants from 16 to 18 if the State agency found that the child was regularly attending school. The House report which accompanied that change stated:

> "It is estimated that about 100,000 additional children may obtain the aid by virtue of this change, *provided all States amend their laws accordingly.*" [H. Rep. 728, 76 Congress, First Sess. 28, 29 (1939)] (Emphasis added)

That same report also discussed the possible costs:

> "Additional costs to the Federal Government of these two amendments is difficult to estimate due to the fact that *the amendments are effective only at such time and to the extent that the States match the Federal funds.*" (Emphasis added)

Then in 1964 Congress again amended the Social Security Act so as to extend Federal participation in AFDC programs to those instances where a child had attained 18 but was still attending high school or vocational school. In the Senate Report preceding that amendment, the Committee commented that "the extension of the program in this manner would be optional with the states". [Sen. Rpt. No. 1517, 88th Congress, 2nd Sess. 2 (1964)]

Again in 1965 the definition of a "dependent child" was changed by Congress. The Committee report which accompanied the amendment stated:

> "Under existing law States, *at their option, may* continue payments to needy children up to age 21 in the aid to families with dependent children program, providing they are 'regularly attending a high school

> in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.' The Committee added an amendment extending this provision so as to include needy children under 21 who are regularly 'attending a school, college or university.' *Federal sharing for this purpose would thus be available to States who implement such a program for payments to children regularly attending a college, or university,* as well as those attending high school or a vocational school. . . .'' [Sen. Rep. 404, 89th Congress, First Sess. 147 (1965)] (Emphasis added)

Then in Amendment 511, the language was changed from the then existing requirement — that the child be "(as determined in accordance with standards prescribed by the Secretary of Health, Education and Welfare) a student" — to a requirement emphasizing the latitude given the States — that the child be "(as determined *by the State* in accordance with standards prescribed by the Secretary of Health, Education and Welfare) a student regularly attending a school, etc." [Conference Rep. No. 682, 89th Congress, First Sess. 69-70 (1965)] (Emphasis added)

The gist of the amendments is obvious. On every occasion when Section 606(a) has been amended, Congress has made it very clear that it was optional with the States to either extend the new benefits or not extend the new benefits. If Illinois extended benefits to children beyond 18, it would be in accordance with standards described by Illinois and approved by HEW. Illinois extended benefits beyond age 18 in accordance with its standards, and its standards included the requirement that a child be attending a vocational or technical training school. HEW

has approved that plan and others like it.* What has occurred in the case at bar is entirely consistent with what Congress has stated to be the purpose of the AFDC provisions, which are intended to enable "each State to furnish financial assistance and rehabilitation and other services, *as far as practicable under the conditions in each State,* to needy dependent children and the parents or relatives with whom they are living. . . ." (42 U.S.C. Section 601) This interpretation is consistent with what Congress has said from the very beginning, that the AFDC program "does not represent an attempt to dictate to the States how they shall care for families of this character, but is recognition of the fact that many States need aid to carry out the policy which they have already adopted." [Sen. Rep. 628, 74th Congress, First Sess. 16-19 (1935)]

If any clarification is needed of the Congressional intent, that clarification is provided by the interpretation given the Social Security Act by HEW, which is the administrative body chosen to administer the Act. HEW's interpretation of the Social Security Act is provided in part G-3220 of the HEW Handbook:

> "The objective of the *optional* extension of the AFDC age limit to age 21 is to make it possible for States to claim Federal financial participation in the costs of the assistance given in behalf of individuals under that age. . . ." [Handbook of Public Assistance Administration, "Greensheets", Supplemental pages for the Handbook, part IV]

Furthermore, HEW's position, that States have discretion in determining how far their AFDC program is to be extended, has been expressly set forth by regulation:

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* This is in marked contrast to the situation which was presented to the Court in *King* v. *Smith,* 392 U.S. 309 (1968 )where HEW was negotiating with Alabama at the time that suit was brought.

> "States have substantial latitude and corresponding responsibility for determining the coverage, nature and scope of their public assistance programs. Although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act." [45 C.F.R. Section 233.10(a)(1)(i); Federal Register, Vol. 36, No. 40 (Feb. 27, 1971, p. 3866)]

This regulation is consistent with HEW's interpretation of the purposes of the Social Security Act, one of which purposes is to "encourage and enable State agencies to develop and expand social services in their programs, *recognizing that primary responsibility rests with the State agencies to determine the purposes and scope of their assistance programs within the framework thus set forth in the Federal Act.*" (Handbook of Public Assistance Administration, "Greensheets", Supplemental pages for the Handbook, G4210) Since HEW has been entrusted with the administration of the Act, its interpretation should be given great deference. [*Lewis* v. *Martin,* 397 U.S. 552, 559 (1970); *Rosado* v. *Wyman,* 397 U.S. 397, 415 (1970). *Cf. Dandridge* v. *Williams,* 397 U.S. 471, 481 (1970)] HEW's interpretation has been consistent, and Congress has continued to make appropriations for the various programs approved by HEW even though Illinois and many other States do not have a definition of "dependent child" as broad as the Federal definition. We have in the case at bar what a lower federal court has referred to as "the apparent acquiescence of Congress (including steady appropriations) over the years in state arrangements which are so common that they must be deemed to be known at

least to the responsible and interested Committees of the Congress." [*Snell* v. *Wyman,* 281 F. Supp. 853, 868 (S.D. N.Y. 1968)]

**B.**

**The classification originally established by Congress in the Social Security Act and incorporated by Illinois into its Public Aid Code, which provides that AFDC benefits will be extended to a needy child over age 18 and under 21 if that child is in a high school, technical or vocational training school, is not arbitrary.**

All the appellants' objections to the classification originally created by Congress and now adopted by Illinois are predicated on the premise that vocational and technical training leads to a grossly inferior education for AFDC recipients. The attitude that a vocational or technical education is somehow inferior was referred to last year by Representative John Dellenbach, Chairman of the House Republican Task Force on Education and Training:

> "At the very heart of our problem is a natural attitude that says that vocational education is designed for somebody else's children. . . . We have promoted the idea that the only good education is an education capped by four years of college. This idea, transmitted by our values, our aspirations and our silent support, is snobbish, undemocratic and a revelation of why schools fail so many students. The attitude infects Federal Government which invests $14 in the nation's universities for every $1 it invests in the nation's vocational-education programs. . . . The attitude must change. The number of jobs which the unskilled can fill is declining rapidly. The number requiring a liberal-arts college education, while growing, is increasing far less rapidly than the number demanding a technical skill. In the 1980's, it will still be true that fewer than

> twenty percent of our job opportunities will require a four year college degree." [Quoting from the 1969 Annual Report of the National Advisory Council of Vocational Education, Vol. 116, Congressional Record, August 12, 1970]

Such an attitude overlooks the fact that vocational schools have certain beneficial characteristics. Because technical and vocational schools emphasize employment, these schools maintain close contact with industry so that they can revise their curriculum in response to technological improvements and changes in labor market demands. Since it is not necessary to get approval from school boards or administrative bureaucracies, even major curriculum changes can be instituted in very short periods of time.

But the point of this is not that a clerk, draftsman, denal assistant, electronics technician, auto mechanic, court reporter, computer operator, T.V.-Radio Repairmen, clerk-typist, body and fender repairman or a secretary has a better profession than a teacher in the elementary grades. The point simply is twofold: first, that there are substantial differences between the two classes, and second, that the poor are not being disadvantaged by the Illinois Public Aid Code, which must be considered not in isolation, but in the context of the legislative scheme granting many more benefits to the needy college student than the needy vocational student.

As long as a needy child is in high school, he is entitled to AFDC benefits. In light of the various studies showing the importance of a high school degree, the appellees do not believe that the appellants are seriously questioning this particular classification. Once a child reaches age eighteen he then has a choice to make. If he is a dropout and is no longer interested in conventional schooling, he may

still enroll in a technical or vocational school. In most cases he can do so even though he does not have a high school diploma. The chances are that he will have to pay tuition, which is substantially greater than the minimum charges required in order to attend a junior college. If he chooses to attend a technical or vocational school, he then is entitled to AFDC benefits under the Illinois Public Aid Code.

On the other hand, if the student has a high school degree and, like Omega Minor, aspires to be a teacher in spite of the fact that there is a gross surplus of teachers for the elementary grades, he can then choose to attend a college or university. While it is true that he is no longer entitled to receive AFDC benefits under Illinois law, he may apply for the scholarship and grants reserved expressly for AFDC recipients who wish to attend a college or university. [Ill. Rev. Stat. ch. 23, Section 4-3 (1969)] As opposed to the student attending a vocational or technical training school, who is entitled to receive AFDC benefits for three years at most, the student at a college or university is entitled to the scholarship and supplemental grants for four consecutive years of study, notwithstanding the fact that he reaches age 21. Additionally, he has available to him through the Illinois State Scholarship Commission, non-repayable competitive scholarships, non-competitive grants based on need alone and also educational loans guaranteed by the State of Illinois. [See Ill. Rev. Stat. ch. 122, Sections 30-15 to 30-15.13 (1969)]

Summarizing, there are two distinct groups, each of which has benefits available in different ways. A child who is unable to get into a college or university is provided with AFDC benefits for short term periods terminating in employment for the recipient. Those who have high school

degrees and are able to get into a college or university have other benefits which are not available to the former class. All in all, it cannot be said that Illinois has acted irrationally or arbitrarily.

C.

**If the Federal definition of a "dependent child" which is contained in Section 606 of the Social Security Act (42 U.S.C. Section 606) is construed to be mandatory, then Illinois and numerous other states will have to amend their plans and either cut their grants or appropriate additional monies to avoid violating the Supremacy Clause.**

Under Section 606 of the Social Security Act, the definition of a "dependent child" is broken down into numerous parts. First of all, such a child has to be deprived of parental support. Second, the child has to be living with certain designated relatives. Third, the child has to be of certain age and/or fulfilling certain educational requirements. It is maintained by the Appellants that Section 606 is mandatory upon the States, and that Illinois' failure to broaden Section 4-1.1 of its Public Aid Code to the same scope as Section 606 of the Social Security Act constitutes a violation of the Supremacy Clause of the United States Constitution. If appellants' argument is accepted, every state which does not now define "dependent child" in accordance with the exact terms of Section 606 of the Social Security Act is in violation of the Supremacy Clause.*

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*Appellees' argument is predicated upon HEW's description of the AFDC programs, which description is contained in Public Assistance Report No. 50, 1970 ed., entitled "Characteristics of State Public Assistance Plans

In 1956 Congress expanded the list of relatives with whom a dependent child could be residing (to be eligible for AFDC) to include first cousins, nephews, or nieces of the dependent child. The Illinois statute, however, does not expressly allow AFDC benefits to be extended to needy children who are residing with first cousins, nephews or nieces of the dependent child. [Ill. Rev. Stat. ch. 23, Section 4-1.2 (1969)] Several other states, notably Georgia, Indiana and Iowa, have a similar problem in that the list of relatives in their statutes is not as broad as Section 606 of the Federal Social Security Act. If appellants' argument is accepted, all are in violation of the Supremacy Clause.

A similar problem arises with regard to the age requirement. For example, Section 606(a) provides, without any school requirement or other qualification, that a "dependent child" is a needy child under age 18. If the appellants' arguments are accepted, this means that Arkansas, California, Colorado, the District of Columbia, Georgia, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Virginia, all of which require school attendance of some sort from a child under age 18, are probably in violation of the Supremacy Clause.

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Under the Social Security Act." At the time the Brief was being written, law clerks were preparing a similar chart, which is now Appendix E of this Brief, from the actual statutes. When this argument had been prepared and when it had already been delivered to the printer, it became obvious that there were differences between the Appendix and HEW's Report. This argument therefore relies upon the Report.

States such as Connecticut and Minnesota, which limit aid to children below 19, would according to appellants' argument similarly be in violation of the Supremacy Clause, even though such an age limitation short of age 21 has been sustained by the lower federal courts. [*McClellan* v. *Shapiro,* 315 F. Supp. 484 (D. Conn. 1970)]

States such as Alaska, Delaware, Florida, Mississippi, Missouri and Wisconsin must be violating the Supremacy Clause because they cut off AFDC benefits at age 18. [*Contra, Cheley* v. *Burson,* 324 F. Supp. 678 (N.D. Ga. 1971)] And lastly, there are nine other states which, like Illinois, limit AFDC assistance to students attending high school or vocational school; if appellants' arguments are accepted, Alabama, Indiana, Iowa, Montana, Nevada, North Carolina, North Dakota, Vermont and Washington will have to join Illinois in amending their plans and appropriating more money or, perhaps, cutting their grants. In light of Illinois' current financial deficit, a cut in the grants to less than 100% of need is the most likely result.

From the foregoing it is obvious that there are numerous States having statutes defining dependent children in a more restrictive way than is provided for in 42 U.S.C. Section 606. Most of these statutes were, the appellees guess, at one time or another in compliance with the definition contained in Section 606, but Congress has expanded the definition faster than many States could follow. Based on clear language in the Congressional Reports, HEW has consistently indicated that the Federal definition of a dependent child, which is contained in Section 606, merely delimits the range of Federal participation, and accordingly no plans that the appellees are aware of have been disapproved for failure to comply fully with Section 606. The situation has continued for many years, during which

time Congress has continued to appropriate funds. If HEW was incorrect in its interpretation, Congress certainly knows how to correct the situation. In the past Congress has made it mandatory to give medicaid to the needy attending colleges or universities, even though they do not qualify under the AFDC plans. Congress has also clearly required, by inserting the requirement in Section 602 of the Social Security Act, that AFDC benefits be extended to needy children who are in foster homes. 42 U.S.C. Section 602(a)(20) If Congress desires to bring about the result sought by the appellants, it need only pass the Family Assistance Act of 1970 (HR 16311), which would make assistance to individuals under 22 who are in school or college mandatory, both under part D and part E of the Social Security Act. Appellants, however, would have this Court accomplish by judicial fiat what Congress has thus far refused to do. The only substantial sources of support for this request are this Court's decision in *King* v. *Smith,* 392 U.S. 309 (1968), and certain language in the HEW Handbook. Upon examination neither of these two sources of support relied upon by the appellants provide sufficient justification for the result urged.

In *King* v. *Smith,* 392 U.S. 309 (1968), this Court held illegal Alabama's refusal to provide AFDC payments to children who met all the dependency criteria except that they had a "substitute father". While certain broad language in the *King* case supports the appellants' argument, the precise nature of the holding is delimited in this Court's concluding remarks:

> "We hold today only that Congress has made at least this one determination: that destitute children who are legally fatherless cannot be flatly denied federally funded assistance on the transparent fiction that they have a substitute father." (392 U.S. at 334)

The State of Alabama had in effect defined "parent" in a manner which was not only contrary to the natural meaning of the word, but which was also contrary to the spirit of the Social Security Act. But compare what Alabama did in the *King* case with what Illinois has done, which was merely to adopt substantially the same definition originally incorporated by Congress into the Social Security Act. Then in 1965 Congress expanded this definition of a "dependent child" to include a needy child who is "(a) under the age of 18, or (b) under the age of 21 and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college or university, *or* regularly attending a course of vocational or technical training designed to fit him for gainful employment;" [42 U.S.C. Section 606(a)] (Emphasis added) Considering only a limited portion of the definition for the present, note the word "or" — Congress has provided that a dependent child can be either a needy child between 18 and 21 who is attending a college or university *OR* a needy child between 18 and 21 who is regularly attending a course of vocational or technical training designed to fit him for gainful employment. Illinois has not defined a term contrary to its normal meaning and contrary to the purposes of the Social Security Act, but has merely chosen, as have numerous other States, to participate in less than the full federal scheme. There is no clear conflict between the Illinois Public Aid Code and the Social Security Act, nor any palpable infringement upon the policy expressed by the Social Security Act, so as to constitute a violation of the Supremacy Clause. See *Snell* v. *Wyman,* 281 F. Supp. 853, 868 (S.D. N.Y. 1968), *aff'd,* 393 U.S. 323 (1969).

The only other substantial argument which the appellants have is the fact that the HEW Handbook contains language to the effect that the recipient and his parents should choose the type of education which is best for him. This is merely instructive language promulgated by HEW, which has the primary responsibility for interpreting the Social Security Act, and HEW, by its attorney, has informed the Court that this language is merely suggestive and not mandatory. (See Memorandum for the U.S. as Amicus Curia in response to Reply Brief for Appellant Alexander) Certainly HEW should be in the best position to judge what its language means. This ambiguous language in the Handbook, disowned by HEW and unsupported by Congressional remarks, should not provide the basis for an extensive alteration in the basic underlying policies which have been followed for several years. [See *Rosado* v. *Wyman*, 397 U.S. 397, 414, fn. 17 (1970)]

In light of the many States having statutes like Illinois, in light of Congress' continuing appropriations over the past several years, in light of the position taken by the administrative body charged with enforcing the Social Security Act, the Illinois Public Aid Code must be sustained as reasonable. No doubt a reduction of approximately $30.00 per month in welfare payments is a substantial matter to the appellants, but they are still receiving welfare benefits, and most importantly, those more in need are being helped with the limited funds available. This Court should not strike down the plans of Illinois and numerous other States, thereby forcing Illinois to cut basic grants, without a clear mandate from Congress. There has been no such mandate. If Congress wishes to achieve the result urged by the appellants, it can do so simply by passing legislation pending before it. Perhaps the legislation will

pass, perhaps it will not, but if such a result comes about, it should be done by Congress, which has the power to grant further federal funds, not by this Court.

## CONCLUSION

For the foregoing reasons, the Appellees ask that the judgment of the lower court be affirmed.

Respectfully submitted,

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# APPENDIX A
# VOCATIONAL AND TECHNICAL SCHOOLS LOCATED IN THE CHICAGO AREA

## ALLIED INSTITUTE OF TECHNOLOGY

(Educational Service of International Telephone & Telegraph Corporation)

| Courses Offered | Entrance Requirement | Length of Course |
|---|---|---|
| Architectural Engineering Technician | High School or G.E.D. Test | 100 weeks |
| *Electronics Engineering Technician | " | 100 weeks |
| Industrial Tool Engineering Technician | " | 100 weeks |
| *Electronics Technology | " | 50 weeks |
| Engineering Drafting Technician | " | 50 weeks |
| Tool & Die Making | " | 50 weeks |
| Air Condition, Heating & Refrigeration | " | 50 weeks |
| Automotive Mechanics | " | 50 weeks |
| Mechanical Drafting | " | 38 weeks |
| Precision Machine Tool Operation | " | 38 weeks |

## DE VRY INSTITUTE OF TECHNOLOGY

(Bell & Howell School)

| | | |
|---|---|---|
| Engineering Technician | High School or G.E.D. Test | 108 weeks |
| Engineering Technologist | G.E.D. Test or High School | 3 years |
| Electronics Technician | High School or G.E.D. or Entrance Exam | 72 weeks |

## ELECTRONICS TECHNICAL INSTITUTE

| | | |
|---|---|---|
| *T.V. Radio & Electronics Technician | No H.S. Degree | 16 weeks |
| Air Conditioning, Refrigeration & Automatic Heating Service Technician | " | 16 weeks |
| *Electronics Computer Service Technician | H.S. degree or G.E.D. | 16 weeks |
| Technology Course | " | 50 weeks |
| Electromechanical Computer Engineering Technician | " | 72 weeks |

## AMERICAN INSTITUTE OF ENGINEERING AND TECHNOLOGY

| | | |
|---|---|---|
| Scientific Motor Tune-up and Service Technician | Completion of 8th Grade or 16 yrs. of age | 24 weeks-days<br>48 weeks-nights |
| Basic Scientific Motor Tune-up Course | " | 24 weeks-day and night |
| *Auto Body & Fender Repair Mechanic Course | " | 24 weeks-days<br>48 weeks-nights |
| Basic Auto Body & Fender Repair Course | " | 26 weeks-days and nights |
| Machinist Course | " | 72 weeks-nights<br>36 weeks-days |
| Basic Machine Shop Course | " | 48 weeks-days and nights |
| Industrial Welding Course | " | 26 weeks-days<br>52 weeks-nights |
| Fundamentals Course | " | 26 weeks-days and nights |

## AUTOMOTIVE TECHNICAL INSTITUTE

| | | |
|---|---|---|
| *Auto Mechanics | Aptitude Test | 32 weeks-days<br>50 weeks-nights |
| Auto Body Repair and Repainting— | Aptitude Test | 20 weeks-days<br>31 weeks-nights |

## CORTEZ W. PETERS BUSINESS COLLEGE

| | | |
|---|---|---|
| Business Administration | High School degree or enter without degree on probation | |
| Secretarial Studies | | |
| Junior Clerical | | 9 months |
| Executive Stenography | | 18 months |
| Bookkeeper | | 54 weeks |
| *Clerk Typist | | 9 months |
| Secretary Science | | 18 months |
| Higher Accounting | | 18 months |
| Key Punch Operators | | 18 weeks |

## TORNROSE, CAMPBELL INSTITUTE OF ENGINEERING TECHNICIANS

| | | |
|---|---|---|
| *Apprentice Draftsmen | 2 years H.S. and pass exam. | 26 weeks |
| * " | " | 42 weeks |

## CHICAGO COLLEGE OF COMMERCE

| | | |
|---|---|---|
| *Court and Convention Reporting Course | H.S. degree, Entrance Exam or G.E.D. Test | 18-24 months-days<br>24-36 months-nights |
| Executive Secretarial | " | 15-18 months-days<br>24-36 months-nights |
| Legal Secretarial Course | " | 15-18 months-days<br>24-36 months-nights |
| Medical Secretarial Course | " | 15-18 months-days<br>24-36 months-nights |
| Secretarial Course | " | 9-12 months-days<br>18-24 months-nights |
| Stenographic Course | " | 6- 9 months-days<br>12-18 months-nights |

## VICTOR BUSINESS SCHOOLS

| | | |
|---|---|---|
| Executive Secretarial | H.S. degree or Aptitude Test | 71 Credit hours |
| Stenographer | " | 51 Credit hours |
| *Senior Typist | " | 56 Credit hours |
| *Clerk Typist | " | 37 Credit hours |
| Receptionist | " | 36 Credit hours |
| Junior Accountant | " | 78 Credit hours |
| Accounting Clerk | " | 57 Credit hours |
| *Business Machine Operator | " | 32 Credit hours |
| *Data Preparation Specialist | " | 36 Credit hours |

## CHICAGO INSTITUTE OF TECHNOLOGY

| | | |
|---|---|---|
| *Medical Technology | H.S. degree or completion of G.E.D. Test | 12 months-days<br>24 months-nights |
| X-Ray Technology | " | 10 months-days<br>15 months-nights |
| Combined Medical and X-Ray Technology | " | 15 months-days |
| Dental Technology | " | 2 years |

## GREER TECHNICAL INSTITUTE

| | | |
|---|---|---|
| A. *Automotive Mechanics | 8th grade or Entrance Exam | 120 hours |
| *Body and Fender Repair | 8th grade or Entrance Exam | |
| 1. Oxy-Acetylene Welding | | 60 hours |
| 2. Fundamentals of Automotive Sheet Metal Work | | 70 hours |
| 3. Body and Fender Repair | | 70 hours |
| 4. Panel and Replacement Body Finishing | | 300 hours |
| B. Diesel Mechanics | 8th grade or Entrance Exam | 150 hours |
| C. Diesel Truck Mechanics | " | 150 hours |
| D. Machinist/Tool and Die | " | |
| 1. Primary Machine Shop Practice | | 432 hours |

| | | | |
|---|---|---|---|
| | 2. Shop Mathematics and Technical Drawing | | 108 hours |
| | 3. Tool and Die Theory and Construction | | 432 hours |
| | 4. Shop Mathematics and Technical Drawing | | 108 hours |
| E. | Refrigeration and Air Conditioning | 8th grade or Entrance Exam | |
| | 1. Domestic Refrigeration | | 150 hours |
| | 2. Commercial Refrigeration | | 175 hours |
| | 3. Electrical Systems | | 50 hours |
| | 4. Air Conditioning | | 100 hours |
| F. | Welding (Gas, Arc, Heliarc) | 8th grade or Entrance Exam | |
| | 1. Shop Math and Technical Drawing | | 40 hours |
| | 2. Oxy-Acetylene Welding | | 200 hours |
| | 3. Technical Drawing | | 40 hours |
| | 4. Electrical Arc Welding | | 200 hours |
| | 5. Gas Welding | | 125 hours |
| | 6. Primary Arc Welding | | 125 hours |
| | 7. Advanced Arc Welding | | 125 hours |
| | 8. High Pressure Arc Welding | | 125 hours |

| | | | |
|---|---|---|---|
| | 9. Heliarc Welding | | 50 hours |
| | 10. MIG and Dual Shield Arc Welding | | 40 hours |
| G. | Auto-Deisel Technology | 8th grade or Entrance Exam | 2 years |
| H. | Heavy Equipment Operator Course I | " | 40 hours |
| I. | Heavy Equipment Operator Course II | " | |
| | 1. Precentive Maintenance | | 40 hours |
| | 2. Motor Graders | | 160 hours |
| J. | Heavy Equipment Operator Course III | " | 360 hours |
| K. | Heavy Equipment Operator Course IV | " | |
| | 1. Preventive Maintenance | | 40 hours |
| | 2. Back Hoe | | 80 hours |
| | 3. Draglines | | 80 hours |
| L. | Heavy Equipment Operator Course V | " | |
| | 1. Preventive Maintenance | | 40 hours |
| | 2. Back Hoe | | 80 hours |

| | | | |
|---|---|---|---|
| | 3. Draglines | | 80 hours |
| | 4. Shovel | | 80 hours |
| | 5. Clamshell | | 80 hours |
| | 6. Hook Crane | | 40 hours |
| M. | Heavy Equipment Operator Course VI | 8th grade or Entrance Exam | 54 hours |
| N. | Heavy Equipment Operator and Mechanic Course VII | " | 1300 hours |
| O. | Professional Truck Driver Course VIII | " | 40 hours |

## APPENDIX B

**Article In Wall Street Journal, Sept. 22, 1971**

LEARNING A TRADE
VOCATIONAL EDUCATION BOOMS AS
JOBLESS SEEK TO ACQUIRE NEW SKILLS

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YOUTHS SHUNNING COLLEGE LIFE,
VETERANS ALSO BOOST ROLLS;
BUT IS THIS A GOOD TREND?

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BETTER WORKERS FOR LESS PAY

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By LEWIS M. PHELPS
Staff Reporter of The Wall Street Journal

CHICAGO—After two years of study toward a degree in education, Patricia McMahon, 20, decided to become a college drop-out. "The employment situation for teachers is so bad that I was just wasting my time and money in college," she says.

So Miss McMahon quit Illinois State University in Normal—and then promptly enrolled in a vocational-education program at a junior college here to learn how to be a therapist for patients who have difficulty breathing. "I'll be able to get a job at any hospital in the country and earn $12,000 to $15,000 a year. Who needs a college degree?" she says.

More and more people like Miss McMahon are deciding that vocational education is the key to obtaining and holding a steady job. The technical and trade schools, which have long been the training ground for persons

seeking a job skill not requiring a college degree, now are being inundated with laid-off white-collar workers and college graduates who can't find jobs.

Consequently, many vocational schools are having record gains in enrolment. The U.S. Office of Education estimates enrollment at public vocational schools will jump 9% to a record 10.4 million this fall; Adult-program enrollments will soar 27% this year to 2.8 million students. Private vocational school enrollment (which is much smaller) is growing at a rapid rate, too.

**A Way to Heaven**

Gains at some schools are especially large.

In Illinois, a state official says adult-training programs this year will have "double, and in some subjects triple" the number of students as two years ago. Indiana's vocational-technical college system expects a 50% enrollment gain this fall from last year's 5,400. *Los Angeles Trade Technical Institute*, which claims the largest student body of any trade school in the country, says many fall-term classes were filled months ago. In past years only a few students registered before classes began.

Meanwhile, colleges and universities are showing the smallest enrollment gains in a decade, with an estimated 2.5% increase this fall. The National Association of College Admissions Counselors estimates there are 700,000 vacancies on campuses this fall.

Many educators view such trends as an indication of a healthy reevaluation of educational priorities. "Our higher-education programs are turning out more graduates than the economy can absorb. In many cases people are spending four years in colleges and aren't prepared to do any specific job when they finish," asserts Edwin L.

Rumpf, director of vocational and technical education for the U.S. Office of Education. "People are finally beginning to recognize that college isn't the only way to get to heaven."

That view is hardly unanimous, of course. "There's a lot of talk about the increasing acceptance of vocational education, but industry still pays a premium for a bachelor's degree. The people who don't get one are hurting their long-run earnings power," says Marcia Friedman, a senior research associate at Columbia University in New York. Moreover, she adds "vocational education isn't a panacea for all employment ills. Many jobs don't require any specific technical training."

**Avoiding the College "Hassle"**

Nevertheless, lots of people are trading the possible long-term gains of a college education for the more immediate benefits they think vocational schooling offers. Minnesota's vocational-school system in past years has drawn less than 5% of its 18,000 students from college transfers. This year it expects "well over twice" that percentage, says Robert Van Tries, assistant state commissioner of education. "Students are noticing the inability of the job market to absorb college graduates, so they're turning to vocational schools," he says.

In addition, some high school graduates who in past years might have gone to college are bypassing it in favor of trade schools. Educators say that accounts for part of the decline in admissions applications at some colleges this year. David Jawor, 18, counts himself among that group. Even though he was graduated at the top of his class at *Harrison High School* in Chicago last June, he doesn't plan to attend college. Instead, he's enrolling

in a union-sponsored work-study program to become an apprentice electrician.

"A lot of my friends agree with me that college just isn't worth the hassle anymore," he says. "You can earn just as much in the trades as you can as a professional, and you don't have the expense of four years of college either."

The laid-off people enrolling in trade schools are trying to develop new skills. Ryder Inc., which operates schools to train truck drivers and heavy-equipment operators, claims a security analyst and an economist, both out of work, are among its current students.

**An Edge in the Job Market**

It's clear that vocational training gives people an edge in the job market compared with those who lack formal training. National unemployment among teen-agers stands at 16%, but the rate for teens with vocational training is only 5%, the U.S. Office of Education says.

There are also indications that high unemployment levels have treated college graduates more harshly than vocational school graduates. The Office of Education estimates that 85% of those high school graduates who complete vocational programs find jobs in the field for which they were trained. That hiring rate hasn't diminished significantly during the recession, a spokesman says.

On the other hand, business hiring of college graduates dropped about 26% this year, according to a survey by the College Admissions Council, a Bethlehem, Pa., organization. "Perhaps 40% of this year's liberal-arts and education majors are unemployed or badly under-employed," says Frank Endicott, a placement official at Northwestern

University who studies the national job-placement market.

One reason for the strength in hiring of vocational graduates is that technological advances create new jobs. Persons trained in data processing, paramedical specialities, jet-engine maintenance and laser technology are in heavy demand. But vocational schools also are creating courses to fill long-standing shortages of workers in areas like diesel-engine repair, refrigeration repair and restaurant cooking.

Employers say vocational-school graduates are willing to work for less pay than college graduates will. Automatic Electric Co., a subsidiary of General Telephone & Electronics Corp., hires technical-school graduates as engineering trainees for about $400 a month less than college graduates demand. "It's a big cost saving for us," an official says.

Many employers also feel that vocational-school graduates perform certain jobs better than their college-trained counterparts. Argonne National Laboratory, an Atomic Energy Commission laboratory near Chicago, used to hire all its computer programmers from among the ranks of college graduates. Now more than half are graduates of junior colleges that provide vocational-training programs. "College graduates are more interested in broad theory than in practical application, so they tend to make more programming mistakes," an official claims. "That can get pretty costly in terms of lost computer time."

Employment pressures aren't the only reason that vocational education is booming, of course. Federal grants to state governments for vocational-school facilities and equipment will reach $458 million this year, up from $390 million last year and $168 million in 1965. State govern-

ment expenditures have been rising at an even faster pace, so the schools can handle many more students than in the past.

Then, too, veterans returning from Vietnam are swelling the ranks of vocational students. "They're really no-nonsense students," says an official of Los Angeles Trade Technical Institute. "There are always some classes, like fashion design and photography, that always attract more students than we can place in jobs. But these veterans come in and ask, 'Where are the job openings?' If we tell them 'auto repair' they sign right up. They really have their feet on the ground."

## APPENDIX C

Article from October, 1971,
Publication entitled Phi Delta Kappan
pp. 82-85

**William S. Graybeal**

### TEACHER SURPLUS AND TEACHER SHORTAGE

**The surplus is real, but it would disappear tomorrow if society wanted high-quality education badly enough to pay for it.**

The casual reader of educational literature may be perplexed by the seeming conflict in pronouncements about the current status of supply of and demand for public school teachers. Some observers, including the Research Division of the National Education Association, have reported that there is now a surplus of qualified teachers for most assignments, an adequate supply in several assignment areas, and shortages in a few others. Other observers, again including the NEA Research Division, have reported a continuation of teacher shortages this year; that a large shortage of teachers would exist if the public schools met minimum standards of quality in programs and staffing. The primary difference in these conclusions results from a difference in the assumptions underlying the estimate of the demand for qualified teachers.

The NEA announcement of *surpluses* reflects the comparison of the supply of qualified teachers with the numbers of teachers who *actually will* be employed for a given school year. The difference between the number of applicants and the number of positions being filled gives a picture of actual employment opportunities awaiting new graduates prepared to teach and former teachers desir-

ing to reenter teaching. This estimate of the demand for teachers includes the new teachers needed for positions related to school enrollments and for replacement of teachers leaving active employment.

The announcement of continuing teacher *shortages* is based on the comparison of the supply of qualified teachers with the numbers of teachers who *should be* employed in a given school session to attain a specified standard of educational quality at that time. This is a theoretical estimate — the shortage does not reflect the number of actual positions which will be filled as quickly as qualified applicants are available. It is useful, however, for long-term planning and evaluation. Comparison of the estimated supply with this estimate of the demand provides an indication of the possible impact of current teacher supply upon continued progress in improvement of education.

If the projected standard of quality in education is realistic in likelihood of attainment, continuing growth in the supply of new teachers accompanied by relatively small growth in school enrollments will provide sufficient staff to meet this standard in the foreseeable future.

The existence of a practical limit to the amount of financial support likely to be directed to public education should be recognized. Otherwise the projected standards of minimum quality in education programs and staffing are only speculative, since it is unlikely that they will ever be attained. Long-term planning is not meaningful if it is based on the assumption that there will always be sufficient teaching positions created to provide employment for all interested people who meet minimum qualifications for entering teaching.

The projection of an attainable standard of minimum quality in educational programs and staffing does provide, however, a long-term goal toward which such progress and the adequacy of present and future supply may be

evaluated accurately. The results of this evaluation provide information useful to institutions as they plan for future enrollments and programs. It will also be extremely valuable to college freshmen as they attempt to select programs leading to employment after their graduation three or four years from now.

The NEA report of a teacher oversupply two years ago resulted from the observation of 1) an *actual* surplus of qualified applicants for open positions, and 2) the outlook that unless present trends are changed, the supply of qualified applicants will also exceed the quality-based level of demand within the near future. For the first time in recent history the five-year outlook is for *actual* surpluses which, if accumulated, would provide more teachers than needed to attain a standard of minimum quality.

Because this sharp change in the future supply of qualified teachers calls for serious thought and action in adjusting some of the factors influencing teacher supply and demand, the NEA has established a task force which is reviewing the implications of the teacher manpower situation. The task force will provide direction to NEA efforts to accomplish more complete utilization of available teacher manpower, assist unemployed teachers, and guard against possible deleterious outcomes of a teacher surplus.

There is no question that the supply of graduates prepared to teach also is inadequate for the number of teaching-related jobs which *should* be created. Large numbers of additional jobs should be created to assure day-care services for pre-school children, to improve recreational and educational experiences for people in every age group of the population from pre-school to "golden age," and to assist large numbers of people now underparticipating in the benefits of American life (culturally different; physi-

cally, mentally, and emotionally disadvantaged; socially maladjusted; etc.). If society were to allocate sufficient resources to create enough of these additional jobs, the personnel requirements would likely exceed the estimated future surpluses of teachers. However, the present-day teacher education programs may not provide the best preparation for these teaching-related occupations. It might be more efficient to create the needed jobs in these areas and then to organize programs to prepare people for each of these areas as a specialty. This would relate their preparation directly to their future assignments and would encourage them to enter these occupations directly rather than to accept such assignments as a second choice because of difficulties in finding a teaching position.

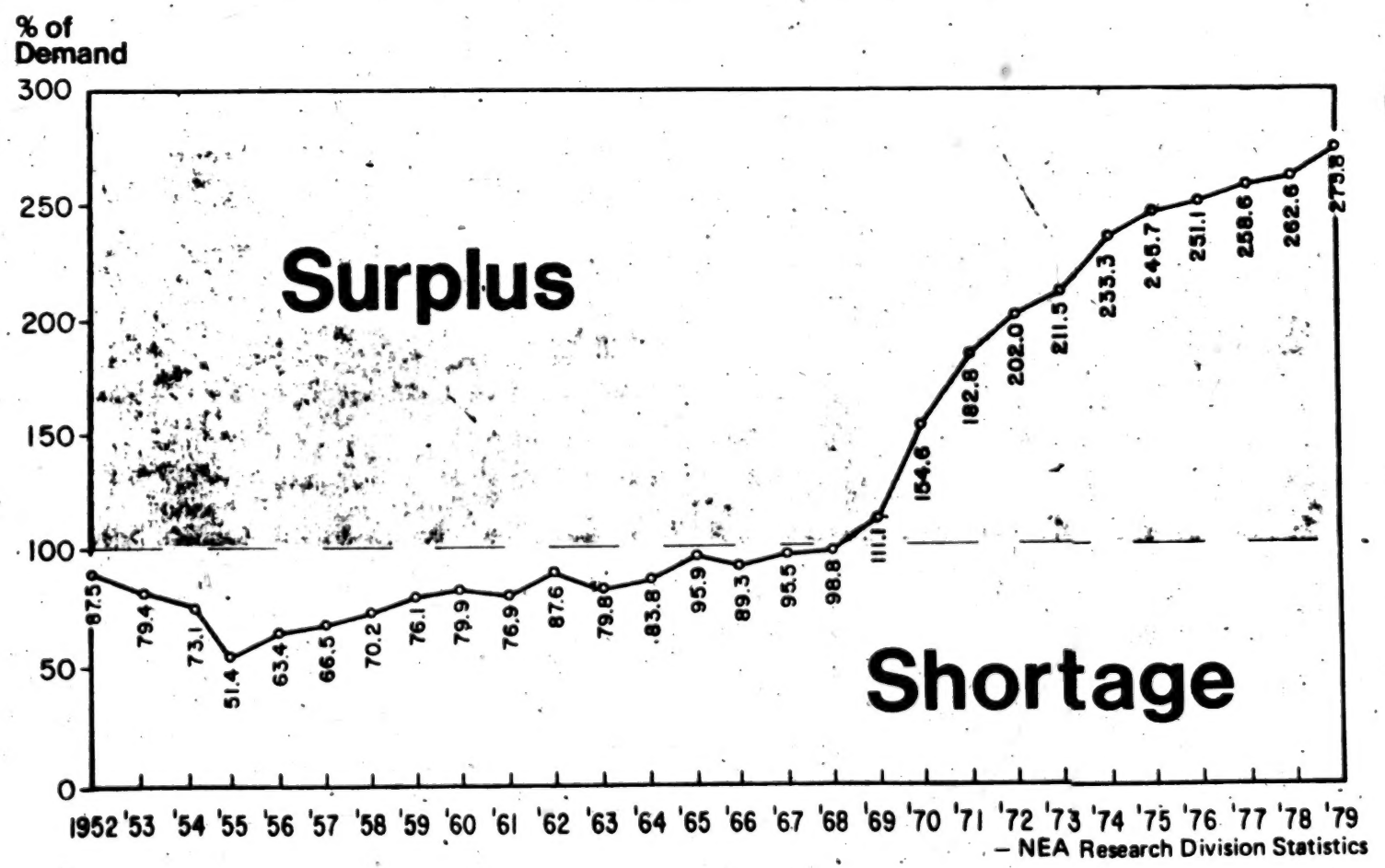
The following paragraphs summarize the considerations underlying the NEA Research Division's estimates of teacher supply and demand. Details about these estimates and the specific figures are given in the annual NEA Research Division report, *Teacher Supply and Demand in Public Schools*. The projections and the considerations underlying them are reported in the October *NEA Research Bulletin*.

**The Supply**

In addition to currently employed staff, the present supply of teachers comprises former teachers who have interrupted their careers; college graduates completing preparation to enter teaching positions for the first time; graduates who have postponed entry into teaching; former teachers desiring to return to teaching from supervisory, administrative, or supporting positions; and those ready to enter teaching as a second career.

Of the public school teachers employed in 1965-66, 87.4% were employed as teachers the preceding year, 8.5% were attending college or university full time, 1.6% were en-

**FIGURE I**
**Supply of Beginning Teachers as Percent Of Normal Demand, 1952 to 1979, According To Present Trends**




— NEA Research Division Statistics

gaged in homemaking or child-rearing on a full-time basis, 1.1% were working in a nonteaching occupation, and the remainder were in military service, unemployed and seeking work, or in other classifications. These estimates were obtained during a period of general teacher shortage and may not be accurate for a period in which the supply is equal to the demand for new teachers. Some of those attending college or university full time the preceding year were experienced teachers who had interrupted their careers to acquire advanced preparation. However, it is clear that the majority of new teachers (persons employed for a given school year who were not employed as teachers anywhere the preceding school year) came from the graduating classes of colleges and universities.

National estimates of the new supply of college and university graduates completing preparation to teach for the first time with minimum certification requirements have been reported annually by the NEA Research Division for 24 years. The numbers of graduates prepared to teach have represented from 26.7% (in 1950) to 36.2% (in 1971) of all graduates receiving the bachelor's and first professional degree.

NEA Research Division projections for the 1970's are for teacher education graduates to be 37% of the projected numbers of graduates receiving the bachelor's and first professional degree. Unless there is a considerable change in the emphasis given to teacher education, it seems likely that future numbers of graduates prepared to teach will continue to grow at about the same rate as the total number of college graduates.

Reflecting the growth in total number of college graduates, the supply of graduates prepared to teach in 1971

(305,711) is more than twice as large as was observed in 1961 (129,188). Projections of college and university graduates show that by 1978 the annual number of graduates prepared to teach (397,000) will be three times as large as the number in 1961.

Not all teacher-education graduates normally enter teaching immediately following graduation. Even in times of critical shortage, more than one-fourth of these prospective teachers postpone entering or decide not to enter teaching during the year following their graduation. Thus we estimate the number of beginning teachers available for entry (supply) in any period in terms of the percent of all teacher education graduates *known* to have entered teaching immediately following their graduation during a period of teacher shortage. Active interest in employment as teachers is projected to be 83.3% of graduates prepared for the elementary level and 69.2% of those prepared for the secondary level.

The annual supply of qualified graduates available for teaching positions was between 65,000 and 90,000 in the 1950's; it increased to 198,000 in the 1960's; it reached 217,750 in 1970; it is projected to grow from 229,053 in 1971 to 266,000 in 1975; it could continue to grow from 277,000 in 1976 to 308,000 in 1979. These projections show the annual supply of beginning teachers in the 1970's to be between two and three times as large as the annual supply of 80,000 to 90,000 observed during the late 1950's.

The supply of qualified persons in the pool of unemployed teachers during a given school session is difficult to estimate accurately. The 1960 U.S. Bureau of the Census reported 304,460 persons as elementary- and secondary-school teachers not gainfully employed at the time of the census. These were people who had completed at least

four years of college. An assumption that this group contains the 20-year accumulation of about 1:5% of the teaching staff employed in the public schools provides an estimate that 439,000 persons were in this pool in 1971. This source of supply will continue to grow by at least 2,000 persons each year, reflecting the growth in the total teaching staff during the past 20 years.

The number of reentering teachers employed in 1960 was 18.3% of the persons estimated to be in this pool. Because the year 1960 was in a period of general teacher shortage, this rate of entry may provide an estimate of the supply from this source if attractive positions were available. It would have meant the employment of 80,400 former teachers this fall, about 16,[illegible]00 more than the number actually employed.

**Estimates of Normal Demand**

The demand for new teachers to replace those leaving through normal turnover is estimated to be about 8% of the total number of teachers each year. This is derived from two studies by the U.S. Office of Education and from a series of sample surveys conducted by the NEA Research Division. Because these estimates were derived during a period of improvements in educational quality, projections using these estimates are likely to reflect a continuation of the rate of these improvements.

The numbers of experienced teachers reentering teaching after at least one year away from it have been about 3% of the total number of teachers employed the preceding year.

Normal demand, therefore, to replace teachers leaving the proofession is estimated to be about 8% of the total number of teachers, with reentering teachers filling three-eighths and beginning teachers filling the remaining five-eighths of these positions.

The number of teachers needed to handle enrollment growth was projected on the basis of recent trends of improvement in the pupil-teacher ration. Because the estimated demand for reentering teachers is basd one turnover, the demand for teachers to handle enrollment growth is treated as demand for beginning teachers.

The demand for new (beginning and reentering) teachers for replacement and enrollment change is the *actual* demand for teachers for a given year. The distribution of this actual demand among subject areas and grade levels is estimated by applying the distribution of the numbers of new teachers reported to have been employed the preceding year (23 states are currently able to report this information).

Because the number of births each year began to decline in 1962 and continued to decline each year until 1969, the enrollment potential for public schools in the 1970's will not increase significantly. The projected growth in the total number of public school teachers between 1971 and 1979 (24,000 positions) will not be as large as the growth in teachers employed in *any one* of the 10 years immediately prior to 1970 (average annual growth of 64,200 positions). As a result, the major source of demand for new teachers during the 1970's will not be increased enrollments but improvements in staffing quality and replacement of teachers in normal turnover. The total annual demand for beginning teachers after 1971 will be between 108,000 and 115,900 through 1979, less than half as large as the projected supply in each of these years (average annual supply of 271,200 between 1972 and 1979).

**Quality-Based Estimates**

The estimated demand for new teachers to attain minimum quality in educational programs and staffing com-

prises the normal demand described above plus the new teachers needed to reduce the number of oversize classes, to replace teachers having substandard qualifications, to enlarge school offerings and programs for pupils not now being served (kindergarten, special education, courses not offered because of shortage of qualified teachers), and to replace teachers misassigned for a major portion of their time. Precise standards for these components, however, have not been announced and validated.

During the period of teacher shortage, NEA Research Division estimates were based on the following standards for class size and minimum educational qualifications for teaching: The maximum acceptable teacher load has been 34 pupils per class in elementary grades or a teaching load of 199 pupils per day in secondary grdes. The minimum acceptable educational qualification has been the bachelor's degree. An acceptable sign of progress toward providing special education programs has been the number of teachers needed to serve half of the children requiring but not currently having special education services in a single year.

In periods of widespread teacher shortage there was little question that these were standards for rock-bottom *minimum* quality in education programs and staffing. It was accepted that each component of these standards was more than justified and that needs were much greater than the levels projected. However, in these years there were not sufficient number of qualified teachers to fill even the normal vacancies. In the current period of teacher surplus, with an adequate supply of qualified teachers available for most assignments, additional research and evaluation should guide decisions about the relative effectiveness of establishing a higher minimum acceptable level of quality in each of these areas. However, it should be re-

membered that current economic, financial, and employment trends do not suggest attainment of even the former standard for minimum quality in the immediate future, much less an improved standard.

Attainment of these minimum standards in the fall of 1971 would have required 351,200 beginning teachers, 122,100 more than the supply. But the accumulated surpluses of beginning teachers in the fall of 1969 and the fall of 1970 included 96,900 persons. This number is almost equal to the number of beginning teachers needed in 1971 to attain the minimum levels of educational quality. These facts show that unless the annual supply of beginning teachers is reduced for years following 1971, or unless the quality of educational programs and services is improved to levels above these minimum standards, the period of teacher surplus would begin in the fall of 1972 even though these minimum standards of quality are achieved.

The class size component of this minimum standard probably has least professional acceptance. A very desirable revision — maximum class size of 24 in elementary grades and maximum teaching load of 124 in secondary grades — would be a professionally more acceptable *minimum standard.* Further reduction would also be desirable to meet a professionally acceptable standard for most effective instruction.

Achievement of such a revised minimum standard (based on class size maximums listed above) would have required the employment of 729,900 beginning teachers in the fall of 1971, 500,800 more than the number available at that time. This revised standard would have required the addition of 565,800 teaching positions, an increase of 27.7% over the total number of teachers in public schools in 1971.

The number of beginning teachers needed to attain this revised standard of minimum quality is approximately equal to the projected surpluses of beginning teachers between 1970 and 1974 (573,100) persons. Our present course will provide adequate potential staff to attain this revised standard of minimum quality in 1974, at which time the projected continuing growth in teacher supply would create a period of teacher surpluses beginning with that year.

Present trends are for future annual supplies of beginning teachers to be considerably larger than normal demand. The present margin is sufficient for supplying the increased numbers of beginning teachers which will be needed if the rates of school improvements are increased. The likelihood of an increasingly abundant supply of beginning teachers in the future gives reason for the profession to direct attention to two goals: 1) increasing the demand for beginning teachers through rapid improvements in educational quality, and 2) selectively decreasing the future numbers of graduates prepared to teach. In view of the prospect of a surplus, it should be remembered that there will continue to be a need for at least 100,000 beginning teachers annually for the next decade.

## APPENDIX D

Illinois Revised Statutes, Ch. 122 (1969)

**30—1.** § 30-1. **Number—Teachers scholarships.** There shall be awarded annually at the end of each school year to each recognized public, private and parochial high school maintaining the twelfth grade with an enrollment of fewer than 500 students, 5 scholarships; to each such school with an enrollment of 500 or more students, one scholarship for each 100 students enrolled.

In addition to the scholarships awarded to high schools on the basis of enrollment, there shall be awarded annually at the end of each school year each recognized junior college with an enrollment of fewer than 500 students, 4 scholarships; to each such junior college with an enrollment of 500 to 1,000 students, inclusive, 5 scholarships; and to each such junior college with an enrollment of more than 1,000 students, 6 scholarships. The scholarships provided in this paragraph shall entitle holders thereof to the privileges set forth in Section 30—13 except that the scholarships provided in this paragraph shall be for a period of not more than 2 calendar years and shall be available for use at any time during such period of study except as provided in Section 30—14.

In addition to the scholarships award to high schools and junior colleges on the basis of enrollment, there may be awarded annually at the end of each school year not more than 15 scholarships to persons receiving High School Equivalency Certificates during the preceding year and who have achieved an average standard score on all tests of General Educational Development of 50 or above. The scholarships provided in this paragraph

shall entitle the holders thereof to the privileges set forth in Section 30—13.

**30—2.** § 30.2 **Certification by principal—Scholastic rank.** On or before March 1 in each year, the principal of each recognized public, private and parochial high school maintaining the twelfth grade or junior college shall certify to the county superintendent of schools of the county in which such high school or junior college is located the names and addresses of all students who ranked scholastically in the upper one-half of their graduating class and who graduated from such school during the preceding school year in the order of their scholastic rank in the four-year high school or junior college course of study at the end of the seventh semester. The name of no student shall be so certified unless he signifies in a letter presented to the principal his intention to prepare to teach in the public schools of Illinois. As amended by act approved July 24, 1967. L.1967, p. 1996.

HIGHER EDUCATION STUDENT ASSISTANCE LAW

**30—15.** § 30-15. **Short Title.** Sections 30—15.1 through 30—15.13 shall be known and may be cited as the "Higher Education Student Assistance Law". As amended by act approved Aug. 3, 1967. L.1967, p. 2644.

**30—15.1.** § 30-15-1. **Purpose.** The General Assembly has found and hereby declares that the provision of a higher education for all residents of this State who desire such an education and are properly qualified therefor is important to the welfare and security of this State and Nation, and consequently is an important public purpose; many qualified students are deterred by financial considerations from completing their education, with a consequent irreparable loss to the State and Nation of

talents vital to welfare and security. The number of qualified persons who desire higher education is increasing rapidly, and the physical facilities, faculties, and staffs of the institutions of higher learning operated by the State will have to be expanded greatly to accomodate such persons, with an attendant sharp increase in the cost of educating such persons. A system of financial assistance of scholarships, grants, and guaranteed loans for qualified residents of college age will enable them to attend qualified insitutions of their choice in the State, public or private. As Amended by act approved Aug. 3, 1967. L. 1967, p. 2644.

**30—15.2** § 30—15.2. **Definitions.** The following words and phrases have the following respective definitions for the purposes of the Higher Education Student Assistance Law[1] except to the extent that any such word or phrase is specifically qualified by its context:

* * *

(c) "Approved high school": any public high school located in this State; any any high school, located in the State or elsewhere (whether designated as a high school, secondary school, academy, preparatory school, or otherwise) which in the judgment of the Superintendent provides a course of instruction at the secondary level, and maintains standards of instruction, substantially equivalent to those of the public high schools located in this State.

(d) "Institution of higher learning", "qualified institution", or "Institution": for the purpose of Higher Education Student Assistance, an educational organization located in this State which provides (1) at least an organized two-year program of collegiate grade in the liberal arts or sciences, or both, directly applicable toward the attainment of a baccalaureate degree, (2) which

either is, (a) operated by this State, or (b) operated publicly or privately, not for profit, and (3) in the judgment of the Commission meets standards substantially equivalent to those of comparable institutions operated by this State. For the purpose of Sections 30—15.10 through 30—15.13, the term "Institution of Higher Learning" includes educational institutions located in other States and Territories, graduate schools, professional colleges, nursing schools, and any business, trade technical or vocational school which (1) has been in existence at least 2 years (2) provides not less than 300 hours of classroom instruction or its equivalent, and (3) is accredited by a nationally recognized accrediting association or meets standards established by the State Scholarship Commission.

**30—15.3** § 30—15.3. **State Scholarship Commission.** (a) There is established the State Scholarship Commission, consisting of 7 persons to be appointed by the Governor. The membership of the Commission shall consist of 1 representative of the institutions of higher learning operated by the State; 1 representative of the private institutions of higher learning located in the State; 1 representative of the public high schools located in the State; and 4 citizens of the State chosen for their knowledge of and interest in higher education, but not employed by, professionally affiliated with, or members of the governing boards of, any institution of higher learning located in the State. The Governor shall designate 1 member as chairman. Each member of the Commission shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in performing his duties under this Act.

**30—15.5 § 30—15.5. Eligibility for First Year Assistance—Scholarship.** (a) An Applicant is eligible for the award of a first-year scholarship under the provisions of the Higher Education Student Assistance Law when the Commission finds:

(1) that he is a resident of this State and a citizen of the United States;

(2) that he is a person of good moral character;

(3) that he has successfully completed the program of instruction at an approved high school within 6 academic years prior to the first academic year of the award, or is a student in good standing at such a school and is engaged in a program which in due course will be completed by the end of the academic year, and in either event that his scholarship is above the median for his class; and that he has not had any university, college, normal school, junior college or other advanced training subsequent to his graduation from high school;

(4) that his financial resources are such that, in the absence of scholarship aid, he will be deterred by financial conidserations from completing his education at the qualified institution of his choice; and

(5) that he has superior capacity to profit by a higher education.

(b) In determining an applicant's superior capacity to profit by a higher education, the Commission shall consider his scholastic record in high school and the results of the examination conducted under the provisions of this Act. The Commission shall establish by rule the minimum conditions of eligibility in terms of the foregoing factors, and the relative weight to be accorded to such factors. Subject to the provisions of Sections 30—15.7 (a) of

this Act, the available scholarships shall be awarded to the applicants with the highest qualifications, in the order of merit.

(c) The functions of the Commission shall be exercised without regard to any applicant's race, creed, sex, color, national origin, or ancestry. As amended by act approved Aug. 3, 1967. L. 1967, p. 2644.

**30—15.7a** § 30—15.7a. **Additional Assistance—Grants.** In addition to the scholarships provided for in Section 30—15.7, the Commission shall, each year, receive and consider applications for financial aid under the terms of this Act. The applications shall be submitted by qualified institutions on behalf of their admitted or enrolled students or directly to the Commission by admitted or enrolled students in qualified institutions. Applicants must meet conditions of eligibility prescribed by this Act in Section 30—15.5, paragraph (a), subparagraphs 1, 2, 4 and Section 30—15.5, paragraph (c). Funds for such financial assistance shall be by separate appropriation with grants beginning in September 1967. The amount of stipend shall be that specified by section 30—15.7, paragraph (c) of this Act. The Commission may establish for grant winners under this Section and expectation from the applicant in financial resources which would differ from scholarship winners as described in Section 30—15.7. As amended by act approved Aug. 3, 1967. L. 1967, p. 2644.

## APPENDIX E

### Characteristics Of The Various AFDC Programs*

| State | Age & School Requirements | Definition of Dependent Children | Statutory Citation |
|---|---|---|---|
| Alabama | Under 21 years. If 18 and under 21, must be regularly attending grade school, high school, college, or vocational or technical school. [hereafter referred to as the "STANDARD DEFINITION"] | Deprived of parental support or care by reason of death, continued absence from home or physical or mental incapacity of a parent and living with relatives listed (1) in the Federal Act or (2) in the Federal Act as interpreted [STANDARD DEFINITION] except spouses of step-, great-relatives or of first cousin, nephew or niece; or in foster care as provided under Federal Act. | Code of Alabama Title 49, §17(2) (1958) |

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| Alaska | Under 18 years. | Standard Definition (1) and (2) or in foster care as provided under Federal Act. | Alaska Statutes §47.25.410(3) (19—Supp.) |
| Arizona | Standard Definition—College excluded. | Standard Definition (1 only) or in a foster home. | Arizona Revised Statutes §46-101 (1971 Supplement) |
| Arkansas | Standard Definition—Unless prevented by physical or mental incapacity. College excluded. | Standard Definition (1) and (2). | Arkansas Statutes, Sec. 83-127 1969 Supp. |
| California | Standard Definition—Must be unmarried;attending school unless physically or mentally disabled. College excluded. | Standard Definition (1) and (2). | California Welfare and Institutions Code, Sec. 112-53 (1971 Supp.) |
| Colorado | Standard Definition. | Standard Definition (1) and (2). Also include in-laws but exclude spouses of great-relatives. | Colorado Revised Statutes, Chapter 22, Article 11-1 (1963) |

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| Connecticut | Under 19 yrs. At 19 must be in full time attendance in secondary school only. | Standard Definition (1) and (2). Includes foster home and excludes great-, or adoptive and their spouses. | Connecticut General Statutes Annotated, Section 17-82 (1971 Supp.) |
| Delaware | Under 18 years. | Standard Definition (1) and (2). Includes foster home and excludes great-, adoptive, and their spouses. | Delaware Code Annotated, Title 31 §504 (1970 Supp.) |
| Florida | Under 18 years. | Standard Definition (1) and (2) or in foster care. | Florida Statutes Annotated, Chapter 39, §39.01 |
| Georgia | Under 18 years. If 16 or 17 years, must be attending high school or vocational school unless handicapped. | Standard Definition (1) and (2) except first cousin, nephew or niece, great-, adoptive, and their spouses. Includes foster care. | Code of Georgia Annotated, §99-902 (1968) |
| Hawaii | Standard Definition. | Standard Definition (1) and (2) except great-, adoptive and their spouses. Foster care included. | Hawaii Revised Statutes, Chapter 346, §55 (1970 Supp.) |

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| Idaho | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Statute not available Public Assistance Report No. 50 |
| Indiana | Standard Definition—College excluded. | Standard Definition (1) and (2) except first cousin, nephew or niece. Foster care included. | Indiana Code of 1971 §12-1-7-1 |
| Iowa | Under 20 years; if 16 to 20 years must attend grade, high or vocational school. | Standard Definition (1) and (2) except first cousin, nephew, neice, great-, adoptive and their spouses. Foster care included. | Iowa Code Annotated Ch. 239, §239.1 |
| Kansas | Standard Definition. | Standard Definition (1) and (2) including foster home. | Kansas Statutes Anno. Chap. 39-702 (1968 Supp.) |
| Kentucky | Under 21 years. Children of school age are required to comply with compulsory school attendance law except when exempted. Child 16 | Standard Definition (1) and (2). Includes foster home or private child care institution. | Statute not available Public Assistance Report No. 50 |

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| | or 17 must be regularly attending school, college or university, or taking a vocational or technical training course unless he has been previously exempt from school attendance for physical or mental conditions. If 18 and under 21, school attendance same as for those under 18 but not eligible if previously exempted from school for physical or mental condition. | | |
| Louisiana | Standard Definition. | Standard Definition (1) and (2). | Louisiana Revised Statutes Anno. Ch. 46:231, 1971 Supp. |
| Maine | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Maine Revised Statutes, Title 22 §3741 (1964) |

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|---|---|---|---|
| Maryland | Standard Definition. | Standard Definition (1) and (2). Includes foster home or private child care institution. | Statute not available Public Assistance Report No. 50 |
| Massachusetts | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Anno. Laws of Mass. Ch. 118, §1 (1970 Supp.) |
| Michigan | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Mich. Statutes Anno. §16.456 (1968 Revision) |
| Minnesota | Under 19 years. Below 18 years attending high school, college or vocational school. | Standard Definition (1) and (2). Foster care included. | Minn. Statutes Anno. §256.12 (1970) |
| Mississippi | Under 18 years. If 16 or 17 years, attending school unless physically or mentally disabled. | Standard Definition (1) and (2) except great-, adoptive and their spouses. Foster care included. | Miss. Code Anno. §7172 (1970 Supp.) |
| Missouri | Under 18 years. If between 7 and 18 attending school unless incapacitated. | Standard Definition (1) and (2). Foster care included. | Missouri Revised Statutes, Ch. 208 §208.040 (1959) |

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| Montana | Standard Definition. | Standard Definition (1) and (2) except great-, adoptive and their spouses. Foster care included. | Revised Code of Montana §71-501 (1947) |
| Nebraska | Standard Definition. | Standard Definition (1) and (2) excluding great-great relatives. Foster care included. | Revised Statutes of Neb. §43-504 (1969 Supp.) |
| Nevada | Standard Definition—excluding college. | Standard Definition (1) and (2) interpreted except great-, adoptive and their spouses. Foster care included. | Nev. Revised Stats., Ch. 425, §425.030 (1969) |
| New Hampshire | Standard Definition. | Standard Definition (1) and (2) except great-, adoptive and their spouses. Foster care included. | New Hamp. Revised Statutes, Ch. 167, §167:6 (1969 Supp.) |
| New Jersey | Standard Definition. | Standard Definition (1) and (2). Foster care included. | New Jersey Statutes Anno. §30:4c-2 and §30:4c-31 |

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| New Mexico | Under 21. If 16 or 17, must be regularly attending school or unable to attend because of physical or mental impairment. If 18 and under 21, must be regularly attending school, college or university, or a course of vocational or technical training and making satisfactory progress. | Standard Definition (1) and (2) except for qualification that the incapacity must not be cured or alleviated within 30 days. Foster home included. | Statute not available Public Assistance Report No. 50 |
| New York | Standard Definition. | Standard Definition (1) and (2). Foster home included. | McKinney's Consolidated Laws of N. Y., Vol. 52a §349 (1970 Supp.) |
| No. Carolina | Standard Definition—College excluded. | Standard Definition (1) and (2). Foster care included. | Gen. Statutes of N. C. Chapter 108, §108-49, §108-50 (1966) |
| No. Dakata | Standard Definition—excluding college, except if under 18 years living | Deprived of parental support by reason of death, absence from | N. D. Century Code, Ch. 50, §50-09-01 (1971) |

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| | in home of relative by blood, marriage or adoption. | home or mental or physical incapacity of parent and living with a relative by birth, marriage or adoption. Foster care included. | |
| Ohio | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Baldwin's Ohio Revised Code, Ch. 5107, §5107.03 (1971) |
| Oklahoma | Standard Definition. | Standard Definition (1) and (2) except great-, adoptive and their spouses. Foster care included. | Okla. Statutes, Ch. 56 §164 (1961) |
| Oregon | Standard Definition. | Standard Definition (1) and (2) includes foster care. | Oregon Revised Statutes, Ch. 418 §418.035 |
| Pennsylvania | Standard Definition. | Standard Definition (1) and (2). | Purdon's Pennsylvania Stat. Anno. Title 62, §432(1) |
| Puerto Rico | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Statute not available Public Assistance Report No. 50 |

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| Rhode Island | Standard Definition. | Standard Definition (1) and (2) includes foster care. | General Laws of Rhode Island Title 40, §40-9-9 |
| So. Carolina | Standard Definition. | Standard Definition (1) and (2) except great-, adoptive relatives and their spouses; foster care included. | Code of Laws of South Carolina §71-91 (1970 Supp.) |
| So. Dakota | Standard Definition—College excluded. | Standard Definition (1) and (2); step-parents excluded; foster care included. | South Dakata Compiled Laws Ch. 28-7, §28-7-1 (1971 Supp.) |
| Tennessee | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Tennessee Code Anno., Title 14, §14-302, 303 (1970 Supp.) |
| Texas | Standard Definition. | Standard Definition (1) and (2) except for spouse, relatives who have assumed parental role and great-adoptive relatives and their spouses. | Vernon's Anno. Revised Civil Statutes of Texas Article 695c, §17 |

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| Utah | Under 21 years. | Deprived of parental care. | Utah Code Annotated Title 55, §55-15-23 (1971 Supp.) |
| Vermont | Standard Definition. | Standard Definition (1) and (2). | Vermont Statutes Anno. Ch. 32, §2701 (1971 Supp.) |
| Virginia | Standard Definition. | Standard Definition (1) and (2) except great-, or adoptive relatives and their spouses; foster care included. | Code of Virginia Title 63.1, §63.1-105 (1971 Supp.) |
| Washington | Standard Definition—College excluded. | Standard Definition (1) and (2) except great-, or adoptive relatives and their spouses; foster care included. | Revised Code of Washington Anno. Ch. 74.12, §74.12-010 (1962) |
| West Virginia | Standard Definition. | Standard Definition (1) and (2). Foster care included. | West Virginia Code, Ch. 9, §9-5-5 (1967) |

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| Wisconsin | Under 18 years. | Standard Definition (1) and (2) except great-, or adoptive relatives and their sopuses; foster care included. | West's Wisconsin Statutes Anno. Ch. 49, §49.19 (1971 Supp.) |
| Wyoming | Standard Definition. | Standard Definition (1) and (2). Foster care included. | Wyoming Statutes Title 42, §42-8 (1971 Supp.) |

*This Appendix is predicated partly upon HEW's Public Assistance Report No. 50, 1970 Edition, "Characteristics of State Public Assistance Plans Under the Social Security Act." When the appellees' law clerks sought the statutory authority for the Report, they found numerous differences between the Report and the statutes. This may be due to information which HEW has from state regulations, court decisions or administrative policies. Where there was a difference between the HEW description of a state plan and the state statute, the statute was accepted if the statute was more recent than the report or if, in one or two instances, there was reason to believe that a secretarial error had been made in compiling the Report.

(1) When reference is made to "relatives listed in the Federal Act," that means father, mother, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece.

(2) "Relatives listed in the Federal Act as interpreted" denotes in addition to the above, any blood relative (not beyond first cousin, nephew or niece) including those of half-blood, relationships to persons of preceding generations as denoted by prefixes of grand, great or great-great; persons who legally adopt a child or his parents as well as the natural and other legally adopted children of such persons; and spouses of any of these persons even though the marriage is terminated by death or a divorce.

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IN THE

# Supreme Court of the United States

No. 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, and on behalf of all others similarly situated,

*Appellants,*

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

## REPLY BRIEF FOR APPELLANTS TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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*Appellants,*

v.

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*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

## REPLY BRIEF FOR APPELLANTS TO BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

### I. THE SOCIAL SECURITY ACT ENTITLES ILLINOIS CHILDREN BETWEEN THE AGES OF 18 AND 21 IN ATTENDANCE AT A COLLEGE OR UNIVERSITY TO A GRANT OF AID TO FAMILIES WITH DEPENDENT CHILDREN.

#### A. Introduction

The government contends in its brief amicus curiae that Illinois need not furnish an Aid to Families with Dependent Children (AFDC) grant to the appellant class of Illinois wel-

fare children because the view of the Department of Health, Education and Welfare is that

> State plans are not invalid merely because they do not define eligibility in terms as broad as the Act, but only if the limitation in question is inconsistent with the purposes of the act.

(p. 11). Appellants reject this view and state that even if it were valid, the government has not presented a case under its own standard which justifies the absolute disqualification of needy and dependent 18-21 year old children who are attending a college or university.

There is no doubt that the government (p. 9) found the denial of AFDC benefits to children attending a college or university *inconsistent with the purposes of the Act*:

> The Department does not approve the policies reflected in either of the state provisions in question . . . . The Department believes the omission of college children from AFDC may have the unfortunate effect of perpetuating poverty and of discouraging some of the most able children of deprived families from realizing their full potential and from assuming leadership needed in their communities.

It is settled that the paramount goal of the AFDC program is the protection of dependent children. *King v. Smith*, 392 U.S. 309, 325 (1968). The Department concedes that appellants are dependent children whom Congress meant to protect. The Department admits that this class of children may well be condemned to a cycle of poverty in spite of the public purpose of the Act to keep them out of poverty and to maintain and strengthen family life.

The only justification that the government offers for accepting the Illinois eligibility limitation is that Illinois may have decided that children attending a college or university "are not 'needy' enough to justify their inclusion in that state's AFDC program" (p. 29). This proposal is inadequate because the state's power to determine the standard of need is not congruent with a power to determine under the Act

the classes of people who may come to the state and say, "I am needy."

Further inadequacy is revealed by the Congressional mandate of §402(a)(8) requiring student earned income to be disregarded (Appellant's brief in No. 70-5021, pp. 20, 51, 81-83). Also, HEW regulations, 45 C.F.R. §233.20(a)(3)(iv)(b) (1971), and the Illinois Department of Public Aid (IDPA) Categorical Assistance Manual (CAM) §1062.6 require that scholarships, grants and loans must be disregarded in determining need except for any part thereof that is available to meet current need. Thus, there is no fat in scholarships, grants and loans for a poor child. Any money not used for school expenses would be budgeted by appellees as an available resource and deducted from the child's AFDC grant. The implication by the federal and state governments that needy college children are less needy than needy vocational school children is simply false. AFDC sustenance benefits are necessary for both.

It is apparent that what the government seeks in this case is a reversal. But, it suggests to this Court an unauthorized method for obtaining that result. The government would have this Court endorse its view allowing state limitations on eligibility subject to the Department's determination of reasonableness (which it calls the doctrine of "equitable treatment"), coupled with a finding that the application of the doctrine was unreasonable in the instant case, and requires reversal. Appellants assert for the reasons stated in our opening brief (pp. 52-60) and for reasons that appear hereafter that this doctrine of equitable treatment is an unnecessary, undesirable, and unauthorized basis for the decision in this case.

### B. The Standard for Determining Compliance With the Act Is the Act Itself

The government advances a standard it calls "equitable treatment" to be used to test state compliance with the Act rather than the terms of the Act itself. This theory was recently considered by the United States Court of Appeals

for the Ninth Circuit in Arizona State Department of Public Welfare v. Department of Health, Education and Welfare (No. 71-1177 and 71-1250, Sep. 14, 1971). The State of Arizona had pursued judicial review in the Court of Appeals following an administrative determination by HEW that Arizona was not complying with the Act and HEW regulations in several respects. HEW had held that Arizona's requirement that the relative caring for a dependent child have legal custody "violates the doctrine of equitable treatment and renders the State's AFDC plan out of conformity with [42 U.S.C. § 602(a)(10)]." Slip opinion at 25. The court viewed HEW's position as follows:

> It is clear from the Administrator's analysis and conclusion that he found Arizona's legal custody provision out of conformity with 42 U.S.C. § 602(a)(10) only because he found it in violation of the "doctrine of equitable treatment." It is equally clear from HEW's brief in this case that the gravamen of HEW's objection to the legal-custody provision is its alleged nonconformity with that doctrine. Thus the questions on appeal, as posed by the briefs and arguments in this case, are (1) whether the "doctrine of equitable treatment," through 42 U.S.C. § 602(a)(10), imposes a valid federal requirement on state AFDC plans, and (2) if so, whether Arizona's legal-custody provision contravenes that requirement.

Slip opinion at 25-26.

The court declined to consider HEW's theory, holding that the Act itself was the legal standard by which to measure state compliance:

> We decline to answer these questions as posed. Instead, *we hold that Arizona's legal-custody provision is in direct conflict with the requirements of 42 U.S.C. § 602(a)(10), even without the intermediation of the equitable-treatment doctrine.* Section 602(a)(10) requires ". . . that aid to families with dependent children shall be furnished . . . to all eligible individuals. . . ."

(Emphasis added.) Slip opinion at 26.

In applying the standard of the Act, the Ninth Circuit found Arizona to be out of compliance:

> Thus, a "needy child . . . who has been deprived of parental support or care: is just as much a "dependent child: within the meaning of the Act when he lives with a relative as when he lives with a parent. 42 U.S.C. § 606(a). A "famil[y] with dependent children" is just as much a "family" within the meaning of the Act when it consists of the child and a relative other than a parent as when it consists of the child and a parent. Id. §§ 601, 606(b).
>
> * * * * *
>
> The Act no more permits any otherwise eligible category of relatives to be automatically rendered totally ineligible for AFDC assistance, on the basis of conditions not found in the Act, than it permits any category of parents to be. And the Act does not permit the latter. See *King v. Smith, supra.*
>
> Although the precise question under discussion is, so far as our research has shown, one of first impression, dicta in other cases support our reading of the Act. Referring to 42 U.S.C. §§ 606(a) and (b), one court has noted that
>
> > "the definitions contain no limitation on eligibility by reason of the fact that one, who is otherwise a 'dependent child,' resides in a household with or without one or more other siblings or other persons. Nor do the definitions or any other portion of the Act vest in any state the authority to embroider upon the definition of 'dependent child,' so as to insert conditions and limitations beyond these imposed by Congress."
>
> *Williams v. Dandridge*, D. Md., 1969, 297 F. Supp. 450, 455 (footnote omitted), *rev'd on other grounds*, 1970, 397 U.S. 471. Accord, *Dew v. Henry*, D. Ariz., 1969, 297 F. Supp. 587, 591. And in *King v. Smith, supra*, 392 U.S. at 330, the Supreme Court found it unlikely
>
> > "that Congress, at the same time that it intended to provide programs for the economic security

> and protection of *all* children, also intended arbitrarily to leave one class of destitute children entirely without meaningful protection." (emphasis in original.)

Slip opinion at 27-29.

Appellants assert that the Ninth Circuit's standard of review was the correct one for determining compliance or non-compliance of a state's plan or laws with the Act and HEW regulations.

The court properly rejected judicial entanglement with such a broad, unauthorized doctrine of administrative powers sought by HEW. Endorsement of the "equitable treatment" doctrine would inevitably lead to Balkanization of the federal welfare programs which the government admits "makes little sense in a highly industrialized and mobile society (p. 9). Endorsement might also lead to a standard of review unacceptable under the Act and this Court's decision in *Rosado v. Wyman,* 397 U.S. 397, 422-23 (1970):

> We find not the slightest indication that Congress meant to deprive federal courts of their traditional jurisdiction to hear and decide federal questions in this field. It is, of course, no part of the business of this Court to evaluate, apart from federal constitutional or statutory challenge, the merits or wisdom of any welfare programs, whether state or federal, in the large or in the particular. It is, on the other hand, peculiarly part of the duty of this tribunal, no less in the welfare field than in other areas of the law, to resolve disputes as to whether federal funds allocated to the State are being expended in consonance with the conditions that Congress has attached to their use.

The standard of review applied to this case clearly requires a reversal of the court below. The analysis is that a "needy child . . . who has been deprived of parental support or care" is just as much a "dependent child" within the meaning of the Act when he is a "student" attending a college or university or when he pursues "a course of vocational or

technical training designed to fit him for gainful employment" at a college or university as when he is attending a vocational or technical school. See 42 U.S.C. § 602(a). Congress placed the emphasis on the requirement of being a "student" as a condition of eligibility for 18 to 21 year olds to receive AFDC. When an otherwise eligible student has an attendance relationship to any of the schools or courses of training specified in the Act he is a "dependent child" within the meaning of the Act and entitled to AFDC.

### C. The Social Security Act Requires Illinois To Furnish Some Aid to All Children Declared Eligible By Section 406(a).

The government, disregarding the foremost guide to legislative intention, i.e., the language employed in the statute, contends that from the outset of the Act, the persons declared eligible by § 406(a) were not necessarily entitled to AFDC—that the definitions contained in §406(a) are not mandatory. The government also claims that definitional sections of Titles IV other than § 606(a) "reiterate the non-mandatory nature of the definitions contained therein". (p. 20). This argument is not persuasive. The government admits that §407 on its face grants the states the right or opportunity to include a needy child deprived of parental support because of unemployment of his father within the definition of dependent child contained in §406(a). The Act itself allows this "if" the state submits a plan which meets certain federal requirements. No such option is granted in §406(a). Indeed, the conclusion must be that if an option appears on the face of one statute in this title of the Act, its non-appearance in other statutes indicates that it is mandatory.

To support its view that granting aid to all the Congressional eligibles is not mandatory, the government draws on the remarks in 1935 of Senator Harrison (p. 19):

> A state will not have to aid every child which it finds to be in need. Obviously, for many States, that would be too large a burden. It may limit aid to children living with their widowed mother, or it can include children without parents living with near relatives. The provisions are not for general relief of poor children but are designed to hold broken families together.

79 Cong. Rec. 9269 (1935).

The government has misinterpreted and misunderstood the nature of these remarks. In stating that a "State will not have to aid every child which it finds to be in need," Senator Harrison was referring to the provisions of the bill which limited eligibility to children in families where there had been a death, desertion or continued absence from the home by the breadwinner. This represented a reduction in the type of families eligible from those eligible under the Federal Emergency Relief Act. As various work programs and unemployment compensation schemes were instituted to counteract the Depression, it was no longer deemed necessary to provide aid to families in which there was a breadwinner in the home who could provide an adequate income:

> With respect to the first child-welfare problem, that of the child in the broken home, where there is no adequate income, I desire to call you attention to facts developed by the relief survey. This survey indicates that there are some 350,000 families of this type, with 700,000 children, which have been supported by the relief. With relief no longer available the necessity will naturally arise of throwing these children in institutions, as the mother cannot usually care for them and at the same time go out and work.
>
> The problem of keeping such broken families together has caused 45 States to enact laws, generally termed "mothers' pensions," and with the termination of the Federal emergency relief measures it would seem almost imperative that the States be

> assisted in bearing the financial burden of providing these pensions.

79 Cong. Rec. 9269 (1935):

The statement that aid might be limited to children living with their widowed mother, or can include children without parents living with near relatives was meant to explain that the federal law was expanding eligibility beyond what the State "mothers' pensions" laws had allowed. Congress had determined that this was the least expensive, and more humane for the children than placing them in institutions.

Provisions for the general relief of poor children were matters for later Congresses, including the present one. See also Sen. Rep. No. 628, 74th Cong., 1st Sess. 17 (1935); *Dandridge v. Williams*, 397 U.S. 471, 480 (1970). ("[T]he federal law requires that the child, to be eligible for AFDC payments, must live with one of several enumerated relatives.")

If authority in addition to the plain meaning and purposes of the Act and committee reports is necessary, statements by the drafter of a bill may be resorted to as a guide to the statute's meaning. Cf., e.g., *Humphrey v. Smith*, 336 U.S. 695, 698-700 (1949). Testimony of Katherine Lenroot, Chief, Children's Bureau, Department of Labor, was a member of the President's Committee on Economic Security responsible for drafting the Committee's Report on Security for Children. Before the House Committee on Ways and Means at their hearings on H.R. 4120, she declared that the purpose of Title IV (the AFDC Title) was to

> . . . meet the basic needs of children everywhere throughout the country—need for economic security when the father is absent from the home. . . . The provisions of the Bill would only attempt to make *universally available throughout the United States certain minimum measures of public protection* without which any private effort and any purely local effort is bound to be spotty and be most inadequate in the places and areas where children are in the greatest need.

House Committee on Ways and Means, Economic Security Act, Hearings on H.R. 4120, 74th Cong., 1st Sess. 262-63 (1935). (Emphasis added.) When questioned by the Senate Finance Committee on what would be the reaction if

> Congress . . . would feel that it should be left to the States entirely without making it mandatory upon some administrator here, or board, with reference to the laws passed by the State, but would make the contribution to the States, make suggestions to the States, and not make it mandatory . . . ?

Lenroot testified that a cooperative approach ought to be taken, but that

> . . . there are certain minimum standards that ought to be insisted upon by the Federal Government if the money is made available to the States, for the reason that we have such a wide variation in the effectiveness of the State and local administrations of mothers' aid in this country, because the mothers' aid program has been, as I have pointed out, largely a local development with very little going in, in the way of services or of equalization funds, from the State agencies.

Id. at 338-39.

As discussed in our opening brief, pp. 63-68, certain minimal standards were required by the federal government, including the right of the individuals defined by the Act whose claims for AFDC were denied to have a fair hearing. These minimal standards were required to overcome the parochialism of the state and local programs and to effectuate the purposes of the Act.

## CONCLUSION

For the reasons stated in this reply brief, appellants urge this Court to instruct the government (The Department of Health, Education and Welfare) through this decision, as Congress has previously done (Sen. Rep. No. 744, 90th

Cong., 1st Sess., 166-67), to assure that Illinois, when participating in the Aid to Families with Dependent Children program shall, as a condition of receiving federal funds, provide AFDC benefits to all persons made eligible by Congress, and to enforce the Social Security Act accordingly.

Respectfully submitted,

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Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

No. 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, and on behalf of all others similarly situated,

*Appellants,*

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

*Appellees.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

## REPLY BRIEF FOR APPELLANTS TO BRIEF OF APPELLEE WEAVER, SUCCESSOR TO APPELLEE SWANK, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

## REPLY BRIEF FOR APPELLANTS TO BRIEF OF APPELLEE WEAVER, SUCCESSOR TO APPELLEE SWANK, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID.

### I. THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT INVALIDATES ILLINOIS' AFDC SCHEME WHICH DENIES AFDC TO AN 18-21 YEAR OLD CHILD ATTENDING A COLLEGE OR UNIVERSITY WHILE GRANTING SUCH AID TO STUDENTS AT A VOCATIONAL OR TECHNICAL SCHOOL.

## A. Introduction

The appellees, Illinois welfare officials, contend that Illinois' scheme of denying Aid to Families with Dependent Children (AFDC) benefits to otherwise eligible 18-21 year old dependent children who are students in attendance at a college or university and granting these benefits to similarly situated children studying at a vocational or technical school is no affront to the Fourteenth Amendment's equal protection and due process clauses. The State submits that the challenged statute and regulation are legitimate ways of allocating its limited resources available for AFDC in that it provides increased benefits for those still eligible for assistance. In support of this allocation the State claims the distinction between the college and vocational students advances certain state interests.[1]

A further basis advanced for the reasonableness of the classification is the extra aid available to college welfare children.

## B. Extra Aid for College Welfare Children, Even If In Fact Available, Does Not Save This Classification From Invalidation Under the Equal Protection Clause.

It is claimed that it is not arbitrary to grant AFDC only to students in a technical or vocational school because college and university students have a "wide range of benefits which are not fully available to the former group" (Appellee's Brief at 23). Appellees claim that the provision of college scholarships for high school students receiving AFDC by the Illinois Public Aid Code, 23 Ill. Rev. Stat. 6 4-3 (1969), competitive scholarships, grants and loans "demonstrates that Illinois has made a reasonable choice in designating those attending vocational or technical schools as being more needy than those attending college, or universities" (Appellees' Brief at 26).

---

[1]The States does not assert that any of the interests it advances are compelling state interests.

Appellees have failed to inform this Court that the special scholarships for public aid recipients have been abolished. Illinois Legislative Service, 1971 Laws, p. 2049-51 (approved Aug. 27, 1971).

In addition, appellees' own regulation requires that scholarships, loans and grants that are available for meeting current living costs are to be considered as available income in determining need. Illinois Department of Public Aid (IDPA) Categorical Assistance Manual (CAM) § 1062.6:

> 1062.6. Loans and Grants. Loans and grants to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education and other loans or grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs are disregarded.

See 45 C.F.R. § 233.20(a) (3) (iv) (b) (1971). Thus, there is not fat in scholarships, grants or loans for needy children attending college. Any money not used for school expenses would be budgeted by appellees as an available resource or income and deducted from the child's AFDC grant. The implication of the State that needy college children are less needy than needy vocational school children is simply false. AFDC sustenance benefits are necessary for both. It must be concluded that the Illinois statute and regulation totally excluding college children from AFDC bears no relationship to need. *King v. Smith*, 392 U.S. 309, 320 (1968). The appellants submit that the State's argument that it does is specious.

The State has put itself in the anomalous position of encouraging bright children on welfare to get scholarships so they may attend college and then punishes them by flatly denying them AFDC sustenance benefits when they reach 18.

The State's argument has also been previously rejected in this very case. In the single judge court's opinion, 314 F. Supp. 1078 (1969), Judge Marovitz succinctly stated:

> Whether or not plaintiffs are eligible for assistance from other legitimate programs is irrelevant to their claim that they have been discriminated against under the challenged aid program.

Appendix at 40.

Finally, this theory of special assistance to poor school children as a palliative for an equal protection violation has been rejected in a recent and significant decision on the equal protection rights of school children. In *Serrano v. Priest*, 96 Cal. Reptr. 601 (Cal. Sup. Ct., Aug. 30, 1971), 2 CCH Pov. L. Rep. 13,685, the California Supreme Court held California's scheme of financing public education violated the Fourteenth Amendment's equal protection clause. In addition to the State's "Basic State Aid" and "equalization aid", an "additional program of 'supplemental aid' is available to subsidize particularly poor school districts which are willing to make an extra local tax effort." Slip opinion at 11. This was not enough, the court found, to vitiate the affront to equal protection:

> Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuations, wide differentials remain in the revenue available to individual districts and, consequently, in the level of education expenditures.

Slip opinion at 11-12. In the instant case, scholarships, loans and grants can only temper somewhat the disparities and hardships children on welfare face in attempting to secure an education. It must be recognized for purposes of analyzing equal protection mandates that in this case Congress made a determination that the welfare children need the sustenance provided by AFDC. Appellees have not met a standard of reasonableness, or the standard of a necessary compelling state interest adopted by the Court in *Serrano*, which justifies the absolute denial of AFDC to needy college and university students.

### C. Denying AFDC Benefits to Welfare Children Who Attend College in Order to Prevent Their Frustration Is Absurd.

Appellants believe that this Court's pronouncement in *Goldberg v. Kelly*, 397 U.S. 254, 265 (1970), that "welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity" is dispositive of appellees contention that individuals made eligible by Congress for AFDC to age 21 will be less disgrunted members of society if the State can cut them off welfare as soon as it can possibly do so.

Appellee welfare officials claim that it is less frustrating to terminate AFDC upon a welfare child's leaving high school than later while he or she is in college (Appellees' Brief at 20). Appellants point out, however, that AFDC benefits in Illinois are not terminated upon completing high school, but upon reaching age 18 and not being in attendance at a technical or vocational school. Appellant Omega Minor received AFDC benefits while attending Southeast Junior College until her eighteenth birthday. Had the benefits been provided until she was 21 she would probably have completed three-and-one-half years of college work.

The frustration of losing benefits after three-and-one-half years is surely not so great as losing them after one-half year as appellees contend. The discouragement of never being able to get off the ground is a much harder one to bear than surmounting an obstacle prior to an almost certain grasp on an important goal. It is also to be noted that under the federal Old Age, Survivors and Disability Insurance program, the benefits of college children terminate upon reaching age 22. Congress, in both the OASDI and the AFDC programs, has rejected the theory advanced here by the State. Sen. Rep. No. 1513, 18th Cong., 2d Sess. 9 (1964).

The appellees have admitted that "[i]t would seem to be in the State's interest that students complete the goal they have undertaken" (Appellees' Brief at 20). The logical conclusion of this argument is that AFDC should be furnished

to a child if he or she starts college before reaching 18. Thus, Omega should have received AFDC benefits. But it must be admitted that the State's logic would only lead to another equal protection violation. It would seem unreasonable to classify children by those who start college before, and those who start after their 18th birthday, an event over which they have no control.

Appellees also assert that "the classification in the Public Aid Code of Illinois does not deny anyone the fundamental right to an education." (Appellees' Brief at 20). As appellees appear to admit, and as the California Supreme Court in *Serrano*, supra, held, education is a fundamental right. Under the doctrine announced in *Shapiro v. Thompson*, 394 U. S. 618, 629, 631 (1969), an unreasonable burden or restriction or penalty on those who exercise fundamental rights will not be tolerated by the Contitution. It is beyond cavil that Mrs. Townsend and her daughter have suffered greatly because of Omega's exercise of this fundamental right.

**D. Encouraging Self-Pride in Recipients Is Not Rationally Related or a Compelling Reason To Deny AFDC to Welfare Students Attending College or a University.**

Appellees predicate their argument, that encouraging self-pride by requiring people to be self-sufficient as soon as possible is a rational reason for the challenged discrimination, on a view of the AFDC title which claims that the

> . . . primary purpose of welfare legislation is to provide temporary assistance and to make recipients employable and self-sufficient as soon as possible so they may develop pride and feel they are an important part of our society.
> (Appellees' brief at 17).

This position is unsupported by any known authority. From the outset of the Social Security Act the various provisions were known to be for the long range security of American citizens. Sen. Rep. No. 628, 74th Cong., 1st Sess. 17 (1935); Hearings on S. 1130, Committee on Finance,

74th Cong., 1st Sess. 338 (1935). Dr. Edwin E. Witte, Executive Director of the President's Committee on Economic Security testified during the House hearings:

> Our American civilization has concluded that the best way to make provision for these young families without fathers is to make a *long-time provision* under these laws for aid to dependent children, under which the children can be cared for in their own homes and under their mother's guidance. That is the most humane and efficient way of meeting this problem.

(Emphasis added). Hearings on H. R. 4120, Committee on Ways and Means, 74th Cong., 1st Sess. 159 (1936 (See also Dr. Witte's testimony at p. 165: "The term 'children' as we use it here, let us say, under 16, young children, the ones who are below the age of self-support, who under any economic system, must be provided for by someone else".)

Appellants point out that most children receiving welfare assistance come from economically, socially and often racially segregated neighborhoods or communities. Many of these children have been exposed to unattractive and appalling aspects of our society. In the ghettos, murder, robbery, rape, theft, incest, narcotics, gambling, and public welfare are daily fare. Any child who comes out of America's ghettos and welfare system, and makes it into college, has ample self-pride to sustain himself as a responsible citizen.

Furthermore, the government's brief amicus curiae deplores just what the State here advocates:

> The Department believes that the omission of college children from AFDC may have the unfortunate effect of perpetuating poverty and of discouraging some of the most able children of deprived families from realizing their full potential and from assuming the leadership needed in their communities.

(Brief of United States at 9).

### E. Avoiding Discrimination Between Welfare Families and the Families of the Working Poor Is Not a Factor in this Case.

Appellee welfare officials assert that in order to prevent an adverse reaction on the part of an alleged "working poor" population it is necessary to deny AFDC to college students while granting it to vocational and technical school students. The argument lacks merit.

In Illinois, there are no "working poor"—appellees do not attempt to define the individuals who might be included within that category. The Illinois Public Aid Code makes complete provision for assuring every resident of the State a standard of living "compatible with health and well-being."[2] 23 Ill. Rev. Stat. § § 1-1, 3-1, 4-1, 5-1, 6-1, and 12-4.11 (1971) (Illinois pays 100 percent of need). The Code also requires "cost-of-living" adjustment in recipient allowances. 23 Ill. Rev. Stat. § 12-4.11 and 12-4.15 (1971); IDPA-CAM § § 1004, 1005 (1970).

Illinois participates in the federal program for families with unemployed and underemployed father. Families with parents employed full time earning less than the public aid standards, and not eligible for one of the federal programs,

---

[2]In addition, the State of Illinois as sovereign is now committed to eliminating poverty and inequality. The Preamble to the state constitution adopted in 1970 states it as a fundamental reason for the state's existence:

> PREAMBLE
>
> We, the People of the State of Illinois, grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy, and seeking His blessing upon our endeavors—*in order to provide for the health, safety and welfare of the people;* maintain a representative and orderly government; *eliminate poverty and inequality; assure legal, social and economic justice;* provide opportunity for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity—do ordain and establish this Constitution for the State of Illinois.
>
> (Emphasis added.)

are granted supplemental general assistance, which assures them a livelihood compatible with health and well-being. 23 Ill. Rev. Stat. § 6-1 (1971). Further, when the standards of assistance appellees have set have been challenged, they have been upheld as providing a livelihood compatible with health and well-being. Thus, Illinois does not have the problem some states might face with a working poor population.

However, assuming arguendo that Illinois did face an adverse reaction suggested by appellees, it would not justify this discrimination against welfare students in college. The rationality of the State's classification must be measured against the purposes and provisions of the Social Security Act. Congress has determined that individuals receiving AFDC benefits need this assistance to maintain and strengthen family life, and by implication, has determined that those individuals with income and resources in excess of the state's standard of assistance do not need this assistance. Congress clearly has the power to make this judgment, and any contrary State policy must yield to it. See *Helvering v. Davis*, 301 U.S. 619, 645 (1937).

## II. JUDICIAL ENFORCEMENT OF 42 U. S. C. § 602 (a) (10) AND § 606 (a) WILL NOT PLACE A FISCAL BURDEN UPON ILLINOIS, AND WILL REQUIRE MINIMAL AMENDMENT TO THE ILLINOIS STATE PLAN

Appellants' opening brief demonstrated that Illinois need suffer no adverse fiscal effect should judgment be entered in favor of this class of children (Appellants' Brief at 29-31, 41, 49-51, 83). It is conceivable that Illinois could suffer some political consequences caused by a minor reduction in grants should it not wish to appropriate the additional annual state share of $500,000.[3] Congress has decided,

[3]This sum is the estimate of appellee Swank submitted tc the General Assembly in the form of a fiscal note attached to House Bill No. 218, introduced in 1971. The bill would have extended benefits to the appellant class. It passed the Illinois House, but was defeated in the Senate by three votes.

however, that its preference is for a State to reduce aid to all rather than deny aid completely to a class of individuals it has made eligible. H.R. Rep. No. 1300, 81st Cong., 1st Sess. 43 (1949); *Rosado v. Wyman*, 397 U.S. 397, 421 (1970); *Dandridge v. Williams*, 397 U.S. 471, 481 (1970). This same argument that the State advances was advanced by Alabama and rejected in *King v. Smith*, 392 U.S. 309 (1968). As a result of *King*, many states had to revise their state plans to eliminate their "man-in-the-house" rule, and either reduce grants or appropriate more money. What Illinois may have to face in this case is no more than what many other states have had to face, nor was it uncontemplated by Congress. After all, Illinois' participation in the AFDC program is voluntary.

The appellee welfare officials are also afraid that if a decision in favor of appellant children is rendered, the State of Illinois will also be required to extend AFDC "to needy children who are residing with first cousins, nephews or nieces of the dependent child (Ill. Rev. Stat. ch. 23, Section 4-1.2 (1969) )" (Appellees' Brief at 44). Appellees' fear is unfounded because Illinois presently allows dependent children to reside with these relatives and grants them AFDC. As a matter of fact, appellee Swank, acting pursuant to the statutory authority of 23 Ill. Rev. Stat. §§ 4-1.2 and 12-13 (1971), has by rule made these children eligible:

> The following relatives, in addition to those specifically named in the Code, (see 350), are approved as relatives with whom a dependent child may live and be eligible for Aid to Dependent Children: (1) any blood relative of the child including *first cousin, niece and nephew* . . . ."

(Emphasis added.) IDPA-CAM, § 351.

It is apparent that Illinois need only add college and university students to its state plan to comply with the definition of dependent children as "students" contained in the Act.

## CONCLUSION

For the foregoing reasons, and the reasons stated in appellants' opening brief, the judgment of the district court should be reversed and the cause remanded to the district court with instructions to enter summary judgment for appellant and other appropriate relief prayed for in the complaint.

Respectfully submitted,

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# TOWNSEND ET AL. *v.* SWANK, DIRECTOR, DEPARTMENT OF PUBLIC AID OF ILLINOIS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

No. 70–5021. Argued November 8, 1971—
Decided December 20, 1971*

This class action challenges on equal protection and supremacy grounds an Illinois statute and regulation under which needy dependent children 18 through 20 years old attending high school or vocational training school qualify for benefits under the federally assisted Aid to Families With Dependent Children (AFDC) program, but such children attending a college or university do not qualify. A three-judge District Court upheld the Illinois scheme. *Held:* Under § 402 (a)(10) of the Social Security Act, a state participating plan under the AFDC program must provide that aid to families with dependent children shall be furnished with reasonable promptness to "all eligible" individuals. Since § 406 (a)(2)(B) of the Act makes dependent 18–20-year-olds eligible for benefits whether attending a college or university or a vocational or technical training course, and Congress has authorized no limitation of eligibility standards within the age group, the Illinois program conflicts with that federal statutory provision and violates the Supremacy Clause. Pp. 285–292.

314 F. Supp. 1082, reversed.

BRENNAN, J., delivered the opinion of the Court, in which DOUGLAS, STEWART, WHITE, MARSHALL, and BLACKMUN, JJ., joined. BURGER, C. J., filed an opinion concurring in the result, *post*, p. 292.

*Michael F. Lefkow* argued the cause and filed briefs for appellants in No. 70–5021. *M. James Spitzer, Jr.*, argued the cause *pro hac vice* for appellants in No. 70–5032. With him on the briefs were *Melvin B. Goldberg.*

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*Together with No. 70–5032, *Alexander et al.* v. *Swank, Director, Department of Public Aid of Illinois, et al.*, also on appeal from the same court.

*Donald J. Veverka,* Assistant Attorney General of Illinois, argued the cause for appellees in both cases. With him on the brief were *William J. Scott,* Attorney General, and *Francis T. Crowe, Bernard Genis,* and *David E. Bradshaw,* Assistant Attorneys General.

*Solicitor General Griswold* and *Richard B. Stone* filed a brief for the United States as *amicus curiae* urging affirmance in both cases.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Appellants, two college students and their mothers, brought this class action in the District Court for the Northern District of Illinois alleging that § 4–1.1 of the Illinois Public Aid Code, Ill. Rev. Stat., c. 23, § 4–1.1 (1967) and the implementing Illinois Public Aid Regulation 150 violate the Equal Protection Clause of the Fourteenth Amendment, and, because inconsistent with § 406 (a)(2)(B) of the Social Security Act, 42 U. S. C. § 606 (a)(2)(B), also violate the Supremacy Clause of the Constitution.[1] Under the Illinois statute and regula-

[1] Section 4–1.1 of the Illinois Public Aid Code, Ill. Rev. Stat., c. 23, § 4–1.1 (1967), provides:

"Child Age Eligibility. The child or children must be under age 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. 'Regular Attendance,' as used in this Section, means attendance full time during the regular terms of such schools, or attendance part time during such regular terms as may be authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status."

Illinois Department of Public Aid Regulation 150 provides:

"Age Requirements:

"A. D. C. Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)"

tion needy dependent children 18 through 20 years of age who attend high school or vocational training school are eligible for benefits under the federally assisted Aid to Families With Dependent Children (AFDC) program, 42 U. S. C. § 601 *et seq.*, but such children who attend a college or university are not eligible.[2] Section 406 (a)(2) of

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[2] Appellant Loverta Alexander lives with her son Jerome in Chicago. Jerome reached his 18th birthday in August 1968 and enrolled in junior college about a month later. In early October a Cook County welfare officer notified Mrs. Alexander that the AFDC benefits received by her since 1963 would be terminated as of November 1, 1968. Though Mrs. Alexander was able to obtain general assistance benefits from the State, the termination of AFDC payments resulted in a loss of $23.52 per month in the family's income. The only reason given by the State for the termination was that Jerome had reached his 18th birthday and was not attending high school or vocational school.

Appellant Georgia Townsend is the sole support of Omega Minor, her only child. Mrs. Townsend, who is disabled, received AFDC benefits for herself and her daughter from 1953 through 1960. Thereafter she received an AFDC grant for Omega, and, benefits for herself under the Aid to the Disabled provisions of the Social Security Act, 42 U. S. C. § 1351 *et seq.* In September 1966, Omega enrolled in junior college. Two months later a Cook County welfare officer notified Mrs. Townsend that Omega's monthly AFDC payment would be canceled as of January 1967. While Mrs. Townsend's disability payments were increased to meet her own needs, the loss of AFDC benefits resulted in a reduction of $47.94 per month in family income. Again the only reason given was the failure to comply with the Illinois statute and regulation.

This action was brought by Mrs. Alexander under the Federal Civil Rights Act, 42 U. S. C. § 1983, seeking declaratory and injunctive relief against the termination of her AFDC benefits. Mrs. Townsend intervened as a plaintiff on behalf of herself and her daughter Omega, and as a member of the class described in Mrs. Alexander's complaint. The three-judge court, convened pursuant to 28 U. S. C. §§ 2281, 2284, held that appellants' complaint stated a cause of action under the Civil Rights Act, and was a proper class action under Fed. Rule Civ. Proc. 23. Those holdings are not challenged in this Court.

the Social Security Act, on the other hand, defines "dependent child" to include a child ". . . (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment." A three-judge district court held that neither constitutional contention had merit and sustained the validity of the Illinois statute and regulation. 314 F. Supp. 1082 (1970). We noted probable jurisdiction, 401 U. S. 906 (1971). We hold that the Illinois statute and regulation conflict with § 406 (a)(2)(B) and for that reason are invalid under the Supremacy Clause. We therefore reverse on that ground without reaching the equal protection issue.

## I

Section 402 (a)(10) of the Social Security Act provides that state participatory plans submitted under the AFDC program for the approval of the Secretary of the Department of Health, Education, and Welfare (HEW) must provide "that aid to families with dependent children shall be furnished with reasonable promptness to *all eligible* individuals." (Emphasis supplied.) In *King* v. *Smith*, 392 U. S. 309 (1968), we considered whether a State participating in an AFDC program may, consistently with the Supremacy Clause, adopt eligibility standards that exclude from benefits needy dependent children eligible for benefits under applicable federal statutory standards. There was before us in that case a regulation of the Alabama Department of Pensions and Security that treated a man who cohabited with the mother of needy dependent children in or outside the home as a nonabsent "parent" within the federal statute. Since aid can be granted under § 406 (a) of the Federal

Act only if a "parent" of the needy child is continually absent from the home, Alabama's regulation resulted in the ineligibility of the children for benefits. We held that the Alabama regulation defined "parent" in a manner inconsistent with § 406 (a) of the Social Security Act and therefore that in "denying AFDC assistance to [children] on the basis of this invalid regulation, Alabama has breached its federally imposed obligation to furnish 'aid to families with dependent children . . . with reasonable promptness to all eligible individuals . . . .'" 392 U. S., at 333.

Thus, *King* v. *Smith* establishes that, at least in the absence of congressional authorization for the exclusion clearly evidenced from the Social Security Act or its legislative history, a state eligibility standard that excludes persons eligible for assistance under federal AFDC standards violates the Social Security Act and is therefore invalid under the Supremacy Clause. We recognize that HEW regulations seem to imply that States may to some extent vary eligibility requirements from federal standards.[3] However, the principle that accords substantial weight to interpretation of a statute by the department entrusted with its administration is inapplicable insofar as those regulations are inconsistent with the requirement of § 402 (a)(10) that aid be furnished "to *all eligible* individuals." (Emphasis supplied.) *King* v. *Smith*, 392 U. S., at 333 n. 34.

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[3] See, *e. g.*, HEW's so-called "Condition X" embodied in a regulation found in 45 CFR § 233.10 (a)(1)(ii), 36 Fed. Reg. 3866:

"The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act." See also HEW, Handbook of Public Assistance Administration, pt. IV, 4210 (1962); Note, Welfare's "Condition X," 76 Yale L. J. 1222 (1967).

## II

It is next argued that in the case of 18–20-year-old needy dependent children, Congress authorized the States to vary eligibility requirements from federal standards. In other words, it is contended that Congress authorized the States to discriminate between these needy dependent children solely upon the basis of the type of school attended. Our examination of the legislative history has uncovered no evidence that Congress granted the asserted authority. On the contrary, we are persuaded that the history supports the conclusion that Congress meant to continue financial assistance for AFDC programs for the age group only in States that conformed their eligibility requirements to the federal eligibility standards.

Section 406 (a)(2)(B) makes dependent 18–20-year-olds eligible for benefits whether attending a college or university, or attending a course of vocational or technical training. The only discretion written into the statute permits a State to determine, "in accordance with standards prescribed by the Secretary," whether a particular student, without regard to whether his attendance is at a college or vocational school, is a student "regularly attending" a bona fide school.[4] This particularization of the area of state authority is itself cogent evidence that Congress did not also authorize the States to limit eligibility to students attending vocational school.

Nor is there anything in the legislative history of the evolution of § 406 (a)(2)(B) to support appellees' argument.[5] That history does show that whenever Congress

[4] See HEW Handbook, *supra*, n. 3, pt. IV, "Green Sheets," G–3220 (1965); cf. H. R. Conf. Rep. No. 682, 89th Cong., 1st Sess., 69–70 (1965).

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extended AFDC eligibility to older children—from those under 16 to those 16–17, and finally to those 18–20—Congress left to the individual States the decision whether to participate in the program for the new age group. There is no legislative history, however, to support the proposition that Congress also gave to the individual States an option to tailor eligibility standards within the age group, and thus exclude children eligible under the federal standards.

The original Social Security Act provided aid only to dependent children under the age of 16. 49 Stat. 629. A 1939 amendment extended aid to children age 16–17 "regularly attending school," 53 Stat. 1380. The States were not, however, required to extend their AFDC programs to the 16–17-year age group. See H. R. Rep. No. 728, 76th Cong., 1st Sess., 28–29 (1939). But if a State chose to do so, not a word in the legislative history suggests that it might limit its choice to students attending schools selected by the State, and exclude children of the age group attending other schools.

In 1956 Congress deleted the school attendance requirement and provided for benefits for all dependent children of the 16–17 age group. 70 Stat. 850. The Senate Report on this bill stated that the bill would "*permit* Federal sharing in assistance to such children" and also that the bill would "*make* some additional needy children eligible

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States refers to § 406 (a) which originally defined "dependent child" to include a child living with his "father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, or aunt." 49 Stat. 629. A statement by Senator Harrison during debate on this provision, 79 Cong. Rec. 9269, is said to establish that the States were not required to extend assistance for every relative listed in the section. Section 407 (b) is also cited as explicitly reserving to the States a choice whether to participate in certain parts of the AFDC program. But these are express authorizations to depart from federal eligibility standards; there is no express authorization in this case.

for aid." S. Rep. No. 2133, 84th Cong., 2d Sess., 30 (1956). (Emphasis supplied.) The Conference Report stated that the bill would "*eliminate* the requirement that a needy child between 16 and 18 years of age must be regularly attending school in order to be eligible for aid to dependent children." H. R. Conf. Rep. No. 2936, 84th Cong., 2d Sess., 42 (1956). Significantly, nothing in the legislative history of that change indicates that the States were at liberty to continue to limit eligibility to 16–17-year-olds attending school.[6]

The first provision for the age group 18–20 came in 1964 when benefits were authorized but limited to children attending high school or vocational school. 78 Stat. 1042. As in the case of the 1939 amendments extending aid to children 16–17 regularly attending school, the States had the choice whether to participate in this new program; S. Rep. No. 1517, 88th Cong., 2d Sess., 2 (1964), expressly stated that "extension of the program in this manner would be optional with the States." When in 1965 Congress amended § 406 (a)(2)(B) in the form now before us nothing was said to indicate that States that had adopted the 1964 program limited to children attending vocational schools were free to continue that limited program and not extend it to children 18–20 attending a college or university. The relevant Senate Report, S. Rep. No. 404, pt. 1, 89th Cong., 1st Sess., 147 (1965), implies the contrary, stating:

> "Under existing law States, at their option, may continue payments to needy children up to age 21 in the aid to families with dependent children program, providing they are 'regularly attending a high

[6] It appears that some States and the District of Columbia continued to limit payments to 16–17-year-olds attending school and to handicapped children prevented from doing so. HEW Public Assistance Report No. 50, Characteristics of State Public Assistance Plans under the Social Security Act (1964 ed.).

> school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.' The committee added an amendment extending this provision so as to include needy children under 21 who are regularly 'attending a school, college, or university.' "

Moreover, the Report notes that one of the purposes of the extension was to bring AFDC in line with the Old Age Survivors and Disability Insurance provisions of the Social Security Act, 42 U. S. C. § 401 *et seq.* Under that program an insured's child is eligible for insurance benefits if he is a full-time student under 22 years of age, and under § 402 (d)(7) this includes a student attending a college or university. S. Rep. No. 404 attributed to the provision under both programs a purpose to "assure, as far as possible, that children will not be prevented from going to school or college because they are deprived of parental support." S. Rep. No. 404, *supra,* at 147. This theme carried through the Conference Committee Report: "This amendment would broaden the type of schools that children over the age of 18 and under the age of 21 may attend and receive aid to families with dependent children payments in which the Federal Government will participate." H. R. Conf. Rep. No. 682, 89th Cong., 1st Sess., 69 (1965).[7]

In sum, when application of AFDC was extended to a new age group—in 1939 to 16–17-year-olds and in 1964 to 18–20-year-olds—Congress took care to make explicit

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[7] HEW itself states: "Within the age limit set by the State, there should be a choice of attending a school, college, or university or taking a course of vocational or technical training for gainful employment." HEW, Handbook of Public Assistance Administration, *supra,* n. 3, pt. IV, "Green Sheets," G–3220 (1965).

that the decision whether to participate was left to the individual States. However, when application of AFDC within the age group was enlarged—in 1956 to all 16–17-year-olds and in 1965 to 18–20-year-olds attending college or a university—the evidence, if not as clear, is that financial support of AFDC programs for the age group was to continue only in States that conformed their eligibility requirements to the new federal standards. Any doubt must be resolved in favor of this construction to avoid the necessity of passing upon the equal protection issue. "Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the States to violate the Equal Protection Clause." *Shapiro* v. *Thompson,* 394 U. S. 618, 641 (1969). Notwithstanding the view of the majority of the District Court, 314 F. Supp., at 1088–1089, we think there is a serious question whether the Illinois classification can withstand the strictures of the Equal Protection Clause. The majority justified the classification as designed to attain the twin goals of aiding needy children to become employable and self-sufficient, and of insuring fiscal integrity of the State's welfare program. We doubt the rationality of the classification as a means of furthering the goal of aiding needy children to become employable and self-sufficient; we are not told what basis in practical experience supports the proposition that children with a vocational training are more readily employable than children with a college education. And a State's interest in preserving the fiscal integrity of its welfare program by economically allocating limited AFDC resources may not be protected by the device of adopting eligibility requirements restricting the class of children made eligible by federal standards. That interest may be protected by the State's "undisputed power to set the level of benefits . . . ." *King* v. *Smith,* 392

U. S., at 334. See *Dandridge* v. *Williams*, 397 U. S. 471 (1970).[8]

*Reversed.*

MR. CHIEF JUSTICE BURGER, concurring in the result.

I concur in the result reached by the Court, but add this brief comment. In dealing with these cases—and the other AFDC cases on the Court's docket—it seems appropriate to keep clearly in mind that Title IV of the Social Security Act governs the dispensation of federal funds and that it does no more than that. True, Congress has used the "power of the purse" to force the States to adhere to its wishes to a certain extent; but adherence to the provisions of Title IV is in no way mandatory upon the States under the Supremacy Clause. The appropriate inquiry in any case should be, simply, whether the State has indeed adhered to the provisions and is accordingly entitled to utilize federal funds in support of its program. Cf. *Rosado* v. *Wyman*, 397 U. S. 397, 420 (1970). I agree that the answer to that inquiry here must be in the negative; I therefore concur in the result reached by the Court.

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[8] The concurring opinion below acknowledged that the reasonable basis for the classification would not be apparent if incentives to learn white- and blue-collar trades and the supply and demand for professional and labor positions were the same. The opinion concluded, however, that the classification could be reasonable in the context of a labor market in which "the skills of manual laborers are in short supply," because in such a market, "as a means of utilizing limited state funds in an effort to channel persons into those employment positions for which the society has great need, the statutory discrimination between college students and post-high school vocational trainees is not purely arbitrary or invidious, but rather, a rational approach designed to correct a perceived problem." 314 F. Supp., at 1091. Apart from the fact that nothing appears about the nature of the market, a classification that channels one class of people, poor people, into a particular class of low paying, low-status jobs would plainly raise substantial questions under the Equal Protection Clause.